

Previous References
5 94734 8/13.

1938.
(Legis)

File No. 9738

Serial Nos. 1.

Letter References

253

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. *one only.*

Part *B* for

March, 1939.

SUBJECT.

*Formulation into Law of the Transfer of Property
(Amendment) Bill and Transfer of Property
(Amendment) supplementary Bill.*

311)

To The Comptroller, G.O.

No. p 454 of 20.7.38

WD 0295-GRB-22,500-18-8-37

*ordered that Act to amend the Transfer of Property
Act and its supplement - that Act be published as
as Acts Nos. XVI and XVII of 1938, in the Mysore
Gazette*

*Transfer of Property Bill
25/3/39*

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No.

1) The transfer of Property Act 1918, in force in Mysore is based on the Transfer of Property Act of 1882 as amended from time to time. The law was under gone great change by the Amendment Acts of 1919 & 1930

The question of convenience the law here was raised by an interpellation in the Kie in Decr 1934. In the course of supplemental question it was stated that if the High Court, who are concerned with the matter it desirable to introduce the measure as a means of removing any existing hardship in the matter in the Council by the Govt

In this view an extract of the proceedings may be sent to the High Court for consideration.

Subd

T/3

RSC

2) The Transfer of Property Regulation was passed in Mysore in 1918. It followed generally the Indian Act of 1882 with all amendments up to 1918. Subsequently there have been 7 amending Acts in British India including the Act XX of 1929. The first four amendments prior to 1929 were minor ones and it is unnecessary for us to adopt them. The Act of 1929 has made substantial changes in many sections and has set at rest points on which decisions have been conflicting. The following are the most important of the amendments:-

1. Section 3.- There is an elaborate definition of what amounts to notice and it has been laid down that registration amounts to notice and constructive notice to an agent is a notice to his principal.

2. Section 15.- Transfers to a class of which some members are unable to take fail in regard to the whole class under the existing law. But, by the amending law, such transfers fail only in regard to persons who are unable to take and not in regard to the whole class.

3. Section 53 A. - A new section giving statutory recognition to the doctrine of part performance has been embodied. There is much confusion and difficulty at present in regard to this under the case law.

4. Section 58.- In a mortgage by a conditional sale, it has been provided that the condition must be embodied in the same deed. Definitions of "a

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a mortgage by deposit of "title deeds" and
"anomalous mortgage" have been inserted.

5. Section 60 A.- Provision has been made
for transference of mortgage to a third party
on redemption instead of ^{re-}transference to
mortgagor.

6. Section 60 B. - Statutory recognition
has been given to the mortgagor's right of
inspection of title deeds.

7. Section 61.- The mortgagor's right to
redeem several mortgages to the same mortgagee
separately or simultaneously is recognised.

8. Section 63 A.- Statutory recognition is
given to the mortgagee's right to compensation
for necessary improvements.

9. Section 65 A. - Statutory recognition of
the mortgagor's power to lease is given.

10. Section 67.- The remedy of foreclosure
is limited to mortgages by conditional sale or
to anomalous mortgage.

11. Section 67 A.- The mortgagee is obliged
to enforce every mortgage by the same mortgagor
simultaneously.

12. Section 68.- It has been recast.

13. Sections 74 and 75.-- These have been
repealed and the doctrine of subrogation has been
expanded in section 92.

14. Section 101.- The law of merger has been
modified.

Transfer of Property Regulation, 1918

File No.

of 193

General and Revenue
Secretariat

15. Section 107.- Provision is made requiring registered lease to be executed by both parties.

There are two minor amending Acts in 1930, which are more or less verbal, ^{These amendments might} and may also be adopted. If approved, the High Court will be consulted in regard to the amending of our Regulation on the above lines.

Ember)

2nd Member)

6
27/7/35

3) The High Court may be consulted
line

27.3.35

4) Yes

SP

31/4 1/4

C
11/4/35

5) Drafts sent

Am
2/4
28/4

6) In

6/2/4/35

No P 5629 of 84.35

In Registrar - High Court
writes the Opinion of High Court

GENERAL SECRETARIAT
28 MAR 1935

RECORDED
28 MAR 1935
No. 6046

6/2/4/35

TYPING SECTION
3 APR. 1935
GENL & REVENUE

HS

Serial
No.

✓
No Q.O.C 970/34-35 Of 29.11.35
Lam

The Registrar, High Court
forwards the opinion of
the High Court in the matter
of amending the Transfer of
Property Regⁿ on the lines of
the British Indian amending Act
7) Sent for perusal in the first
instance

Dm

2/12
for

8) The original ^{sections} and the amends
in British India may put in parallel
columns with the remarks of the
High Court in a third column.

6 3/12/35

9) The drafting of the Bill will be
facilitated if a few copies of the
T.P. Act are obtained. If approved
the library will be required to
order for six copies

Dm

2/12

10) yes

6 20/12/35

the library)

11) Extract taken & the file returned
Dm Br.

22

Supdt. Pr. Br.
C.O.C

2:1:36

NOTE—Contn. Sheet.

see
for a month
1 7-1-36

(2) Saw also the Draftsman of Property Regn. with the amendments made in B. India indicates in the witnesses.

In S. 2 Rules of Hindu, Mohammedan & British law are saved in regard to general rules of Transfer contained in Chap. II.

I thought most of the rules are common to all the rules contained in Sections 13 to 20 differ from the Hindu law.

Transfers or bequests in favour of unborn persons are void under Hindu law, ~~but not~~ and that rule of Hindu law is modified in 13 & 15.

The rule of Hindu law has been modified in B. India by legislation but no such enactment has been passed in Mysore. Hence the rules of Hindu law have

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No.

to be added to the high court
measured that the amendment
must to S. 2 & 129 need
not be adopted.

The amendment is required
to the definition of "notary"
(Section 3) makes registration
amount to notary and notary
to agent as notary to principal.

S. 15 has been amended in
B. India so as to make the
transfer fails in respect of
those persons only in whose
case the interest fails on
account of S. 13 or S. 14. The
original section was based
on the principle in *Keck
v. Robinson*. The application
of English rule of construction
to transfer in India has
been ~~looked with disfavor~~
favors the suggestion in some
decisions. Whether this amendment
is to be adopted is for others.

S. 52 is amended so as

S. 3. The High
Court is not
in favour
of the amend-
ment in
"attested".
This was amended
in the India
by Act 27 of
1926.

Settle difficulties which
had arisen as to when
the law may be said
to commence and when
it may be deemed to end.

By S.S. & A. statistics
registration is given to
the doctrine of part per-
formance providing at
the same time necessary
safeguards to see that
the law of registration
is not evaded. Consequently
amendment is to be made in the
S.S. & A. for the

to be made in the
Registration Regn. &
the Registration Regn.

Indian Bill it was
proposed to make
registration compulsory
in cases of all sale
transfers of immovable
property as suggested
by the High Court.
Some of the members
of the select committee
preferred leaving the
section as it is. The

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Later views seem to have
remained in the Select Committee &
the Assembly
and the amended draft
is over the 2nd of the Act. The
this amendment proposes has been
suggested by the Select Committee
been included in the draft Bill.
The Judge has
commented that ss. 59 & 123 may be
left unaltered. Sections 60 A & 60 B were
introduced by the Select Committee
so as to define the obligations
of a mortgagor to transfer
the mortgage debt to a
third person.

S. 63 A provides for the
mortgagor being entitled to
a charge for improvements made
to preserve the property
from destruction or deteriora-
tion. The High Court has
that power may be given
to mortgagor to remove
fixtures.

65 A ~~provides~~ empowers
mortgagor to grant lease
of the mortgaged property
The Chief Justice would not

This will be so much under $\text{d } 58$ of the Bill
retroactive effect is not given to Sec 67 A

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No.

There is at present no section in our Regn. corresponding to S. 6 & 9 probably because it was not considered desirable to give the right of sale within the limitations of the Court.

The judges of the High Court do not want the adoption of Ss. 6 & 9A even now.

S. 76. The High Court is not in favour of the addition to S. 76 (i) as it would unfairly be the hands of the mortgagees from getting credit for money expended & labour in injustice. The addition in B. India has been made to make the meaning clear in view of a decision of the Privy Council.

If the view here is that the mortgagee should be given the freedom to get credit for necessary expenditures, the amendment would be unnecessary. It is not adopted in the Bill.

The High Court is generally in favour of the other amendments.

While amending the B. Indian Act, a Supplementary Act has also been passed making the amendments in other Acts necessitated by the amendment of the G. P. Act. We may have to ~~amend~~ adopt some of them.

The introduction of a new Section 27A to Specific Relief Act is consequential on the introduction of s. 58A in T. P. Act superseding the doctrine

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of past performance
the amendments to the
Rules of C. P. C. may be
taken up by the High Ct
on the introduction of
the amendments to T. P. Regs.

The amendments to
Regulations for are forward
Sd/- for review as to
whether of the amendments
in the Regs. Feb XX & XXII
of Br. India may be
adopted here.

Sd/- for review,

SE
30/4/30.

13) Sd/- with a draft
Bill to amend & transfer of
Property Regs. and a Supple-
mental Bill on the lines
of the Feb XX of 1929 of Br. India
Drafts & statements of
objects & reasons are also
put up.

The modifications suggested

vide
Regulations
pages 1-
38673
and
1-9159
2974

by the High Court have been
embodied in the Bill.

SG
13/7/36.

(14) Photograph of Statement
of General Principles for B.A. for both
bills

6207436

15) Submitted with a statement
of general principles,
the preliminary paragraph
of the Bill of G. & R. for the
Supplemental Bill may perhaps
be adopted as the Bill of G. & R.
principles

not
received
from
10/8/36
10/8/36
10/8/36

SG
26/8/36.

16) The necessity for amending the Transfer of
Property Regulation has been stated in para 2 of
the notes above. The High Court has been
consulted and the Judges have recommended the adoption
of most of the amendments introduced in British
India, but they are not in favour of a few other
amendments. In the draft bill which is

Flag 0
4/11/36
amended
page 3

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is submitted for consideration, only such of the amendments introduced in British India as have been recommended by the High Court for adoption have been included. The principal points of the amendments are indicated in the statement of general principles.

(12) The amendments proposed to the Transfer of Property Regulation involve subsidiary amendments in certain other regulations. To give effect to those subsidiary amendments, an Act called the ^{Supplementary} Transfer of Property/Amendment Act was passed in British India along with the Transfer of Property Amendment Act. A draft bill on those lines is also submitted. Subsidiary amendments are necessary ~~even~~ in the Specific Relief Act, the Registration Regulation, the Succession Act, the Limitation Regulation and the Code of Civil Procedure. In the draft Bill, amendments to the first three Regulations are proposed. The amendment to the Limitation Regulation is included in a separate draft Bill which is being submitted for amendment of certain other sections also of the Limitation Regulation. The amendments to the Code of Civil Procedure are in Order XXXIV relating to mortgage suits and the forms thereunder. Since these amendments are in the rules, they can be effected subsequently by the High Court under their rule-making power.

(18) The following are submitted for consideration:

1. The Transfer of Property Regulation (Amendment) Bill with the statement of objects and reasons. A statement of general principles for being placed before the R.A. is also submitted.

2. The Transfer of Property Supplementary Amendment Bill, with a statement of objects and reasons. A statement of general principles is also submitted.

(19) If approved, these will be placed before the Dasara Session of the Representative Assembly and introduced in the Legislative Council in the December Session (1936).

(8 Member)

6c

28/8/36

20) A. In normal circumstances it be passed then? with the bill not lapse if not passed by the December Session. In the circumstances, it not be advisable to postpone this to the new C.L., as was noted in the case of the Limⁿ Regⁿ.

SPR
4/9
MS
99

21) unless a session of the L.C. is held in

Serial
No.

March 1937 before dissolution of the present House, none of the bills which are under contemplation for introduction in the December session of the L.C. can be passed, except those which are urgent & which are ~~not~~ referred to a select Committee.

22) There is no urgency about this bill & it may be postponed to the June session ^{R. R. and} after the new Council meets.

Chief Secretary)
(8th member)

6
5/9/36

MS
5/9

23) I agree

S/O

9/9 ^{Mr} 10/9

10/9

24) It has been ordered that this bill should be placed before the ensuing R.A. & L.C.

The draft bill, the statement of general principles and the statement of objects & reasons are for approval. The notes on clauses framed with the statement of objects & reasons will not be published. only the para 1 to 16 will be published. These will explain clearly the reasons for amendment of the existing Act.

11/2/87
18 Transfer of Property Bill

File No.

of 193

General and Revenue
Secretariat

Gen Secy }
/to member }

2nd
10/9/37 1/4.8

10/9

By Please verify
and marked
in red pencil on
page 2 of Bill
and
copy
GENERAL SECRETARY
16 AUG 1937
1055

85) Please bring up -
Similar what other laws have been passed
what others yet remain -

verified and found
correct
SC
10/9

OFFICE OF THE
FIRST MEMBER OF C.J.J.
SEP 10 1937
No 6041

Ind Secy mtr.

10/9 2nd
11/9
13.9

26) No already submitted in person The Bills
regarding the amendment of the Limitation
Act & civil procedure still remain
(to member)

10/9
14.9

27) add
10/9

14/9 2nd
14/9
14.9

28) This is a Council matter. may be disposed of
by circulation.
Chief Secy)

10/9
15/9

10/9
14.9

SEP 14 1937
No 1171

CHIEF SECRETARY
15 SEP 1937
GOVT. OF MYSORE

Transfer of Property Amendment Bill

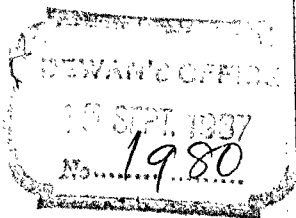
General and Revenue
Secretariat

File No.

of 193

[App. F. III—2

Serial
No.



29) The file, if appd, will be circulated.
Dewan)

MS
15/9

Wg
15.9

30)

MS
16-9-37

MS
17/9

Wg
17.9

c.B

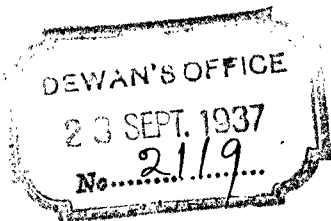
9/1937-38

GENERAL AND REVENUE SECRETARIAT.

Council Matter.

Subject

Bill to amend the Transfer of Property Regulation.



31) Circulated to the Members of Council.

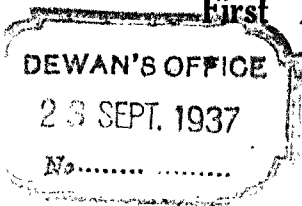
By Order,

Musammat

17th September 1937.

Chief Secretary to Government.

First Member of Council. (Seen)



2208 Second Member of Council. nu

17.9.37.

32)

19/9/37

Under Secy. (Protn.)

by
20-9

S. N. put up.

DEWAN)

MS
22/9

33) D. Z. N. Sukhi for approval.

see
25/9. 18-member)

by
21-9.

34) *for*
21/9

Subject.—

BILL TO AMEND THE TRANSFER OF PROPERTY REGULATION.

35) The Transfer of Property Regulation which was introduced in Mysore in 1918 follows closely the British Indian Act of 1882. There have been many amendments in British India, and finally by Act XX of 1929 the Act has been substantially amended. These amendments have set at rest points on which there have been conflicting decisions. The High Court of Mysore were consulted in regard to amending our Regulation on the lines of the amendments made in British India. The Judges have recommended the adoption of most of the amendments. A bill has been prepared accordingly.

36) The amendments are mostly beneficial and seek to remedy defects which have led to inconvenience or anomalous results. It is also desirable in such important pieces of legislation to have our law on the same lines as in British India.

37) Another supplementary bill to amend the Specific Relief Act, the Registration Regulation and the Succession Act necessitated by the amendments to the Transfer of Property Regulation has also been drafted.

38) Statements of general principles of the two bills have been prepared and it is proposed to place them before the Representative Assembly at its ensuing Session and introduce the bills in the Legislative Council in due course.

39) This proposal which has been agreed to by the Dewan and the Second Member may be graciously approved.

Sphajagore
MEMBER OF COUNCIL.

Bangalore,
22nd September 1937.

Submitted to His Highness.

62) I submit herewith a Final Note by the First
Member of Council re: Bill to amend the Transfer
of Property Regulation,

for His Highness' gracious approval.

Mirza M. Ismail
Dewan.

23rd Sept 1937

23

Record of Cases submitted for the Orders of
His Highness the Maharaja.



Subject.

Bill to amend the Transfer of Property
Regulation.

Chy. L. P.
M.
27-9-37

156

MS
27-9-37

41)

Order.

KRUP
25/9/37

SUBJECT:— Bill to amend the Transfer of Property Regulation.

(*)

31. All urgent or confidential files returned with His Highness' orders may in the absence of instructions or indications to the contrary, be ordinarily circulated to the Members of Council for perusal after the issue of orders.

33. The Secretaries concerned should see that orders in the cases referred to above are issued at once and that the files are returned immediately after to the Chief Secretary for circulation to the Members.

34. In all other cases, the files will first be circulated to the Members of Council at Headquarters and then sent to the Secretariat concerned for the issue of orders.

42)

Circulated to Members of Council for perusal of His Highness' orders ~~before~~ after issue of orders. (Vide Rules 31, 33 and 34 of the Subsidiary Rules for the conduct of business of Council in the Manual of Council Rules and Procedure.)

Musawf

Chief Secretary to Government.

Through the Secretary to Government,

General Department.

29/9/37

43)

FIRST MEMBER OF COUNCIL.

JPZ
29/9

44)

SECOND MEMBER OF COUNCIL.

nu
30/9/37

2560

29.9.37

Serial
No.

20 typing section for make
4 copies of the Sts. of gl.
principles 756. & 2.

See

27/9.

2 R.A. office with copies
of the two statements
of gl principles

See

28/9.

41) 3 copies taken

from
28/9.

Submitted with the statement of general
principles in English & Kanbudo
(for member)

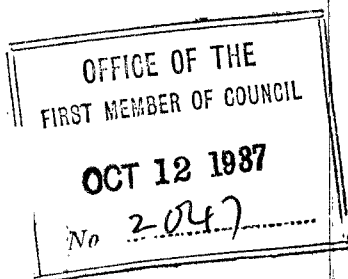
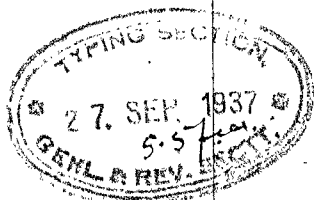
by
11.10.

47) The general principles of
the transfer of Property
Bill & the supplementary
were adopted in R.A.

Proofs of the Bills have
been received & revised
Subs for orders if they
may be published under
rule 8 of L & Subs

See
11/12

WD 0284-GPB-30,000-13-8-37

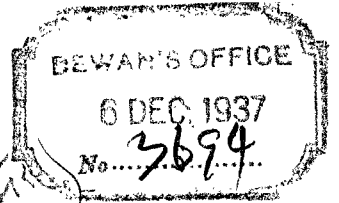


11/12/37

46) It appeared, the bills will be published under Rule 8 of The rules & regulations. The new principles have been approved by the R.A.

(1/2 members
&
newman)

log
6/12



3115
4/12

51) yes

log
5/12

52) Me
7-12-37

log
7/12

53) 20 L.C. office for further action with 2 copies of the proof of the 2 bills

See
8/12 Two copies of the Bills taken and the file put to Prot. B. (1)

8/12/37 Submitted with a note (1/2 members)

log
10/1

may be sent to L.C. office for kindly noting the names of members of S.C. to which the bills were referred at the last meeting.

SE 2/3. L.C. office - The Bill was referred to the same Select Committee as that for the Bill further to amend The Mysore Limitation Act.

OFFICE OF THE SECRETARY
8 DEC. 1937
REPRESENTATIVE ASSEMBLY
AND
LEGISLATIVE COUNCIL

L.C. Secy

OFFICE OF THE SECRETARY

Serial
No.BILL TO AMEND THE TRANSFER OF PROPERTY ACT.

34) In Clause 16, sub-clause (c) of the Transfer of Property Act Amending Bill which is before the Legislative Council, section 58(f) of the Transfer of Property Act is proposed to be amended. It relates to mortgage by deposit of title deeds and the benefit of the provision is conferred on "banks." The definition of 'bank' in the explanation to that clause is not wide enough to include the Imperial Bank, since the definition is limited to banks registered under the provisions of the Banks Act in force in Mysore or in British India or in any other Indian State. The Imperial Bank is constituted by the Imperial Bank Act of British India. Consequently, the definition proposed in the Bill will exclude the Imperial Bank while it would include the Indian Bank Ltd. (Hence a wider definition of 'bank' on the lines of the definition of 'company' in the Bankers' Book Evidence Act may be adopted.

59) The following definition is proposed:

"'Bank' in this clause means an association or company formed principally for the purpose of engaging on the business of banking and registered under the provisions of the law relating to companies for the time being in force in Mysore or in the United Kingdom or in any of the colonies

1. The Mysore Transfer of Property Act will apply to the Imperial Bank, Bangalore after retrocession.

CB 1630

Bill to Amend the Transfer of Property Act

File No.

of 193 .

General and Revenue
Secretariat

colonies or dependencies thereof or in British India or in any other Indian State which may be notified by the Government in the official Gazette in this behalf or incorporated by an Act of Parliament or of the Central Legislature or of a provincial Legislature in India or by Royal Charter or Letters Patent".

This may be considered in the select committee of approved.

18th Member)

Cl.
11/2/1938

64) 102-
13/2

under Secretary, P.N.)

G
14/2/38

61) please put this up along with the bill file in proper time
by
14-2

62) Passed

107
67.5

2nd
71.5

42
95

OFFICE OF THE
FIRST MEMBER OF COUNCIL

FEB 12 1938

No. 513/6

6124
615-

Serial
No.

8250
9/5

63)

Sold. with a draft report
for approval.

su
9/5 (for member)

kg
9.5

64) SR
9/5

wd
11/5

65) issue

kg
10.5

Issued no P 6372-7

66) Continuation of approval
of is still due from
Messrs P. Subbarama
Chetty & Behan Srinivasan
Said. with a draft
summarized

su
9/5

67) issue

kg
23.5 destroyed

Issued P 6620-21 of 23/5

68) 20 L. copies with 3 copies of
the S.E. reports & a copy
of T.P. Bill as amended.

su
24/5

69) Three copies each of the two reports. and 24
of the amended Bill taken.

(Prot. B. 2)

The S. C. Reports have
been published & they
will have to be presented
at the ensuing meeting
of the L. C.

71) The date from which the Acts have to come into force and the dates in clause 56 (a) & (d) have to be inserted. In the Govt of India the corresponding Acts received the assent of Govt. on 1st Oct 1929 but they came into force on 1st April 1930 i.e. about 6 months later. It is for readers if our Acts may come into force from 1st Jan 1929. This may perhaps be mentioned while moving

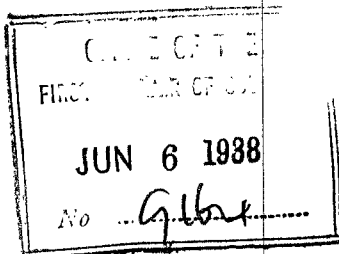
71 M.

In order that the
misinterpretation of the date
of coming into force
of the bill be not
forgotten, a notation
maybe inserted
This happened once in
the L.C., & there was
some trouble -

If there is no notation, the
member in moving 2nd motion
should mention it
A

D. 281/R.L.

Serial
No.



for the Bill being passed
The following motions may
if approved, be included in
the agenda in respect of ^{the} ~~both~~
^{the} ~~two~~ bills

(a) motion that the S.C.
Report & the Bill ^{as amended by} be then
taken into considera-
tion

(b) motion that the Bill
be passed.

Submitted for orders.

see

6/6-73) This ^{Act} may perhaps come into
force from the 1st January 1939
The same date will be given to
clause 56 & 56 &.

74) The 2 motions may be approved
by 18 members)

75) 1/2
6/6

6/6

76) L.C. office for note & return
9/6/38) noted and sent to the Protⁿ B?

9/6/38

Same petition
alluded to
in 10th India when
the new Act was
passed in 1929.

32

J. D. B. M.

File No.

of 193 .

General and Revenue
Secretariat

7) 9/11 Bills have been
passed by the L. C.

77) Subd. with a D. Z. R.
for personally attending the
Bills in the house.

See
25/6/38.

Typed note/Head
100/25-6

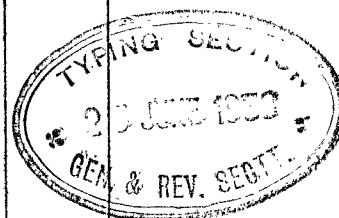
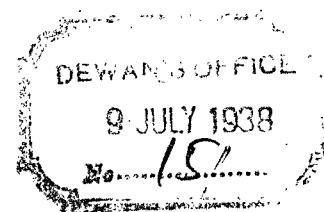
Typed ofr Subd.
27/6, 188 members

100
4.7

80) 1/12/37

81) S. N. put up
Dewon)

17th
8.7.38
100
9.7



85r
5/7.

33

Final Note by the First Member of Council.

Subject:—

◆

Promulgation into law of the Transfer of Property (Amendment) Bill and the Transfer of Property (Amendment) Supplementary Bill.

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*82
V. S. S. 11/6/38*
On 25th September 1937 the Gracious sanction of His Highness was accorded to the introduction of the Transfer of

By V. S. S. 11/6/38
Property (Amendment) Bill and the Transfer of Property (Amendment) Supplementary Bill. The said Bills were read in the Legislative

By V. S. S. 11/6/38
Council in January 1938 and after consideration by the Select Committee they have been passed by the Legislative Council at its recent Budget Session.

83
D. V. S. I solicit the Gracious sanction of His Highness to promulgate the Bills into law.

J. P. Majagopal

Bangalore,
7th July 1938.

MEMBER OF COUNCIL.

324

Submitted to His Highness.

84

I submit herewith a Final Note by the FIRST

*Member of Council regarding promulgation into law of the
Transfer of Property (Amendment) Bill and Transfer of Pro-
perty (Amendment) Supplementary Bill*

for His Highness' gracious ~~approval~~ sanction.

Mirza M. Ismail
Dewan.

Bangalore,

9th July 1938.

Record of Cases submitted for the Orders of
His Highness the Maharaja.



Subject.

Promulgation into law of the Transfer
of Property (Amendment) Bill and Transfer of
Property (Amendment) Supplementary Bill.

Chief Secy
Mys
13-7-38

Mys
15-7

19-7
Vice
President
Mys
11/2

Order.

85) KRW
13/7/38

SUBJECT:—

*Promulgation into law of
the Transfer of Property (Amendment)
Bill and Transfer of Property
(Amendment) Supplementary Bill.*

(*)

31. All urgent or confidential files returned with His Highness' orders may in the absence of instructions or indications to the contrary, be ordinarily circulated to the Members of Council for perusal after the issue of orders.

33. The Secretaries concerned should see that orders in the cases referred to above are issued at once and that the files are returned immediately after to the Chief Secretary for circulation to the Members.

34. In all other cases, the files will first be circulated to the Members of Council at Headquarters and then sent to the Secretariat concerned for the issue of orders.

66) Circulated to Members of Council for perusal of His Highness' orders before/after issue of orders. (Vide Rules * 31, 33 and 34 of the Subsidiary Rules for the conduct of business of Council in the Manual of Council Rules and Procedure.)

(T) Ramcharan
Chief Secretary to Government.

Through the Secretary to Government,

..... *San* Department.

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97)

FIRST MEMBER OF COUNCIL.

SP 15/7

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SECOND MEMBER OF COUNCIL.

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19/7

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& XVII of 1938

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BILL TO AMEND THE TRANSFER OF PROPERTY
REGULATION FOR CERTAIN PURPOSES.

~~1918~~

Whereas it is expedient ~~for~~¹⁹¹⁸ to amend the
Transfer of Property Regulation for the purposes
hereinafter appearing: it is hereby enacted as
follows:--

Short title and
commencement.

1. (1) This Regulation may be called the Trans
fer of Property ^(Amendment) Regulation, 193

(2) It shall come into force on the first
day of.....

Amendment of
Section 3.

2. In section 3 of the Transfer of Property
Regulation (hereinafter referred to as the
said Regulation), for the last paragraph con-
taining the definition of "notice", the fol-
lowing shall be substituted, namely:--

" 'a person is said to have notice' of a fact
when he actually knows that fact, or when, but
for wilful abstention from an inquiry or ~~re-~~
search which he ought to have made, or gross negli-
gence, he would have known it.

Explanation 1.- Where any transaction relating
to immoveable property is required by law to be
and has been effected by a registered instrument,
any person acquiring such property or any part
or share or interest in, such property shall be
deemed to have notice of such instrument as from
the date of registration or, if the instrument has
been registered under sub-section (2) of section
30 of the Mysore Registration Regulation, 1903, ~~or~~
from the earliest date on which a memorandum there-
of has been filed by any Sub-Registrar under
Section 66 of that Regulation.

Provided that -

(1) the instrument has been registered and
its registration completed in the manner pres-
cribed by the Mysore Registration Regulation, 1903, and the rules made thereunder,

(2) the instrument has been duly entered or
filed, as the case may be, in the books kept under
section 51 of that Regulation. and

1/53

(... regarding the transaction to

the instrument relates have been correctly entered in the indexes kept under section 55 of that Regulation.

Explanation II.- Any person acquiring any immoveable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof.

Explanation III.- A person shall be deemed to have had notice of any fact if his agent acquires notice thereof whilst acting on his behalf in the course of business to which that fact is material.

Provided that, if the agent fraudulently conceals the fact, the principal shall not be charged with notice thereof as against any person who was a party to or otherwise cognizant of the fraud."

Amendment of section
5.

3. In section 5 of the said Regulation, after the words "or to himself" the ~~words "or to himself"~~ words "or to himself" shall be inserted; and to the same section the following paragraph shall be added, namely:

"In this section 'living person' includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals."

Amendment of
section 6.

4. In section 6 of the said Regulation, after clause (d) the following clause shall be inserted, namely:-

"(dd) A right to future maintenance, in whatsoever manner arising, secured or determined, cannot be transferred."

Amendment of
section 11.

5. For the second paragraph of section 11 of the said Regulation beginning with the words

"nothing in this section" and ending with the words "in a particular manner" the following shall be substituted, namely:-

"Where any such direction has been made in respect of one piece of immoveable property for the purpose of securing the beneficial enjoyment of another piece of such property, nothing in this section shall be deemed to affect any right which the transfer^{or} may have to enforce such direction or any remedy which he may have in respect of a breach thereof."

Amendment of
Section 15.

6. In section 15 of the said Regulation, for the words "as regards the whole class", the following words shall be substituted, namely:-

"in regard to those persons only and not in regard to the whole class."

Substitution of new
sections for sections
16, 17 and 18.

7. For sections 16, 17 and 18 of the said Regulation, the following sections shall be substituted, namely:--

Transfer to take
effect on failure
of prior interest.

"16. Where, by reason of any of the rules contained in sections 13 and 14 an interest created for the benefit of a person or of a class of persons fails in regard to such person or the whole of such class, any interest created in the same transaction and intended to take effect after or upon ~~the~~ failure of such prior interest also fails.

Direction for
accumulation.

"17.(1). Where the terms of a transfer of property direct that the income arising from the property shall be accumulated either wholly or in part during a period longer than -

(a) the life of the transferor, or

(b) a period of eighteen years from the date

of the transfer,
such direction shall, save, as hereinafter provided be void to the extent to which the period during which the accumulation is directed exceeds the longer of the aforesaid periods, and at the end of such last-mentioned period the property and the income thereof shall be disposed of as if the period during which the accumulation has been directed to be made had elapsed

(2) This section shall not affect any direction for accumulation for the purpose of -

- (i) the payment of the debts of the transferor or any other person taking any interest under the transfer, or
- (ii) the provision of portions for children, or remoter issue of the transferor or of any other person taking any interest under the transfer, or
- (iii) the preservation or maintenance of the property transferred;

and such direction may be made accordingly.

Transfer in perpetuity
for benefit of public.

18. The restrictions in sections 14, 16 and 17 shall not apply in the case of a transfer of property for the benefit of the public in the advancement of religion, knowledge, commerce, health, safety, or any other object beneficial to mankind."

Amendment of
Section 39.

8. In section 39 of the said Regulation
(a) the words "with the intention of defeating such right" shall be omitted, and for the words " of such intention" the word "thereof" shall be substituted; and

(b) the illustration shall be omitted.

Amendment of
section 40.

9. In section 40 of the said Regulation for the words "of the latter property or to compel its enjoyment in a particular manner," the words "in a particular manner of the latter property" shall be substituted.

Amendment of
section 43.

10. In section 43 of the said Regulation, after the words "person" the words "fraudulently or" shall be inserted.

Amendment of
section 52.

11.(1) In section 52 of the said Regulation

(a) for the words "active prosecution" the word "pendency" shall be substituted;

(b) for the words "a contentious" the word "any" shall be substituted; and

(c) after the words "suit or proceeding", where they occur for the first time, the words "which is not collusive and" shall be inserted.

(2) To the same section the following Explanation shall be added, namely:-

Explanation.- For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force."

Substitution of new
section for section 53.

*Fraudulent
transfer*

12. For section 53 of the said Regulation, the following section shall be substituted, namely:-

"53. (1) Every transfer of immoveable property made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed

Nothing in this sub-section shall impair the rights of a transferee in good faith and for consideration.

Nothing in this sub-section shall affect any law for the time being in force relating to insolvency.

A suit instituted by a creditor (which term includes a decree-holder whether he has or has not applied for execution of his decree) to avoid a transfer on the ground that it has been made with intent to defeat or delay the creditors of the transferor, shall be instituted on behalf of, or for the benefit of, all the creditors.

(2) Every transfer of immoveable property made without consideration with intent to defraud a subsequent transferee shall be voidable at the option of such transferee.

For the purposes of this sub-section, no transfer made without consideration shall be deemed to have been made with intent to defraud by reason only that a subsequent transfer for consideration was made.

Insertion of new section
53 A.

13. After section 53 of the said Regulation the following section shall be inserted, namely:-

Part performance

"53-A. Where any person contracts to transfer

for consideration any immoveable property by
writing signed by him or ^{on} his behalf from which
the terms necessary to constitute the transfer
can be ascertained with reasonable certainty,

and the transferee has, in part performance
of the contract, taken possession of the property
or any part thereof, or the transferee being al-
ready in possession, continues in possession in
part performance of the contract and has done so
act in furtherance of the contract,

and the transferee has performed or is will-
ing to perform his part of the contract,

then, notwithstanding that the contract,
though required to be registered, has not been
registered, or, where there is an instrument of
transfer, that the transfer has not been comple-
ted in the manner prescribed therefor by the law
for the time being in force, the transferor or
any person claiming under him shall be debarred
from enforcing against the transferee and person
claiming under him any right in respect of the
property of which the transferee has taken or con-
tinued in possession, ~~except~~ ^{other than} a right express-
ly provided by the terms of the contract.

7
Provided that nothing in this section shall
affect the rights of a transferee for considera-
tion who has no notice of the contract or of the
part performance thereof."

Amendment of
section 55.

14. In section 55 of the said Regulation

(a) in sub-clause (a) of clause (1), after:
the word "~~buyer~~", ~~where it occurs for~~
~~the second time, the words "any trans-~~
~~feree without consideration or any~~

-8-

"property" the words "or in the seller's title thereto" shall be inserted;

- (b) in sub-clause (b) of clause (4), after the word "buyer", where it occurs for the second time, the words "any transferee without consideration or any transferee with notice of the nonpayment," shall be inserted; and after the words "on such amount or part" the words "from the date on which possession has been delivered" shall be added; and
- (c) in sub-clause (b) of clause (6), the words "with notice of the payment" shall be omitted.

Substitution of new section for section 56.

15. For section 56 of the said Regulation, the following shall be substituted, namely:-

Marshalling by subsequent purchaser.

"56. If the owner of two or more properties mortgages them to one person and then sells one or more of the properties to another person, the buyer is, in the absence of a contract to the contrary, entitled to have the mortgage-debt satisfied out of the property or properties not sold to him, so far as the same will extend, but not so far as to prejudice the rights of the mortgagee or persons claiming under him^{or}/of any other person who has for consideration acquired an interest in any of the properties.".

Amendment of Section 58.

(a)

16. In section 58 of the said Regulation, ~~to~~ to clause (c) the following proviso shall be added, namely:-

"Provided that no such transaction shall be deemed to be a mortgage, unless the condition is embodied in the document which

effects or purports to effect the sale";

(b) in clause (d)-

(i) after the words "Where the mortgagor delivers possession" the words "or expressly or by implication binds himself to

deliver possession" shall be inserted;

(ii) for the words "and to appropriate them",

the words "or any part of such rents and

profits and to appropriate the same" shall

be substituted; and

(iii) after the words "or partly in lieu of

interest", for the word "and" the word

"or" shall be substituted; and

(c) after clause (e) the following clauses

shall be added, namely:-

(f) The transaction is called a

mortgage by deposit of title deeds where a

person, in any area to which this provision

may be ^{ex}intended ^{the} by Government by notification

in the ~~Official Gazette~~, delivers to a Bank

or its authorized agent documents of title

relating to immovable property ^{with intent to create a security thereon} accompanied

by a memorandum in writing signed by the

debtor specifying such property and the

amount of credit given or agreed to be given

by the Bank on the security of such property

~~with intent to create interest thereon~~, provided

that a copy of such memorandum under the

seal of the Bank and the signature of its

authorised agent is delivered or transmitted

by registered post within ~~ten~~ days of the

delivery to the bank as aforesaid of the

memorandum to every registering officer ~~who~~

within whose district or sub-district the whole or any portion of such property is situated, or where a special registering officer is appointed or designated by Government in this behalf, to such registering ^{officer} and such registering officer shall thereupon file the copy in his Book No. 1.

Explanation.- "Bank" in this clause means an association or company with limited liability formed principally for the purpose of engaging on the business of banking and registered under the provisions of the law relating to companies for the time being in force in *Mysore and British India or many other State which may be notified by the Government in the official Gazette in this behalf.*
(g) A mortgage which is not a simple mortgage, ~~by xxxxx~~ a mortgage by conditional sale, an usufructuary mortgage, an English mortgage or a mortgage by deposit of title-deeds within the meaning of this section is called an anomalous mortgage."

Amendment of
section 59.

17. In section 59 of the said Regulation:

(a) after the words " a mortgage" the words

X "other than a mortgage by deposit of ~~the~~
title deeds" shall be inserted and

(b) the second paragraph and the Explanation
shall be omitted.

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Insertion of new section
59 -

18. After section 59 of the said Regulation,
the following section shall be inserted, namely:-

"59-A. Unless otherwise expressly provided,

References to mortgagors
and mortgagees to include
persons deriving title
from them.

reference in this Chapter to mortgagors and mortgagees shall be deemed to include references to persons deriving title from them respectively."

Amendment of
section 60.

19. In section 60 of the said Regulation

(a) for the word "payable" the word "due"

shall be substituted;

(b) for the words "the mortgage-deed, if any, to the mortgagor" the following words shall be substituted, namely:-

"to the mortgagor the mortgage-deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee";

(c) for the word "order" the word "decree" shall be substituted; and

(d) after the words "remaining due on the mortgage, except" the word "only" shall be inserted.

Insertion of new sections
60 A and 60 B.

20. After section 60 of the said Regulation, the following sections shall be inserted, namely:-

Obligation to transfer
to third party instead
of re-transference to
mortgagor.

"60-A. (1) Where a mortgagor is entitled to redemption, then, on the fulfilment of any conditions on the fulfilment of which he would be entitled to require a re-transfer, he may require the mortgagee, instead of re-transferring the property to assign the mortgage-debt and transfer the mortgaged property to such third person as the mortgagor may direct; and the mortgagee shall be bound to assign and transfer accordingly.

(2) The rights conferred by this section belong to and may be enforced by the mortgagor or by any encumbrancer notwithstanding an intermediate encumbrance; but the requisition of any encumbrancer shall prevail over a requisition of the mortgagor and, as between encumbrancers the requisition of a prior encumbrancer shall prevail over that of a subsequent encumbrancer.

(3) The provisions of this section do not apply in the case of a mortgagee who is or has been in possession.

Right to inspection and production of documents.

60-B. A mortgagor, as long as his right of redemption subsists, shall be entitled at all reasonable times, at his request and at his own cost and on payment of the mortgagee's costs and expenses in this behalf, to inspect and make copies or abstracts of, or extracts from, documents of title relating to the mortgaged property which are in the custody or power of the mortgagee."

Substitution of new section for section 61.

21. For section 61 of the said Regulation ~~and the Illustration thereto~~, the following section shall be substituted, namely:-

Right to redeem.
separately or simultaneously.

" 61. A mortgagor who has executed two or more mortgages in favour of the same mortgagee shall, in the absence of a contract to the contrary when the principal money of any two or more of the mortgages has become due, be entitled to redeem any one such mortgage separately, or any two or more of such mortgages together."

Amendment of
Section 62.

22. In section 62 of the said Regulation

- (a) after the word "property," where it first occurs, the words "together with the mortgage deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee" shall be inserted;
- (b) for the words "the interest of the principal money" the words "or any part thereof a part only of the mortgage money," shall be substituted; and

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(c) for the words "the principal money," where they occur for the second time, the words "the mortgage-money or the balance thereof" shall be substituted.

Amendment of
Section 63.

23. In section 63 of the said Regulation, for the words "at the same rate of interest" the words "with interest at the same rate as is payable on the principal, or where no such rate is fixed, at the rate of nine per ~~per~~ cent per annum" shall be substituted.

Insertion of
new section 63-A.

24. After section 63 of the said Regulation, the following section shall be inserted, namely:-

Improvements to
mortgaged property.

"63-A. (1) Where mortgaged ~~xxxxxxx~~ property
in possession of the mortgagee has, during the
~~xxxxxxxxxxofthe mortgage, xxxxxxxxxxxx~~ conti-
nuance of the mortgage, been improved, the mortga-
gor, upon redemption, shall, in the absence of a
contract to the contrary, be entitled to the im-
provement; and the mortgagor shall not, save only
in cases provided for in sub-section (2), be liable
to pay the cost thereof.

(2) Where any such improvement was effected at the cost of the mortgagee and was necessary to preserve the property from destruction or deterioration or was necessary to prevent the security from becoming insufficient, or was made in compliance with the lawful order of any public servant or public authority, the mortgagor shall, in the absence of a contract to the contrary, be liable to pay the proper cost thereof as an addition to the principal money with interest at the same rate as is payable on the principal, or

where no such rate is fixed, at the rate of nine per cent per annum, and the profits, if any, accruing by reason of the improvement shall be credited to the mortgagor.

(3) Notwithstanding anything in sub-section (1) a mortgagee may remove at any time whilst he is in possession of the ~~property~~ property mortgaged, but not afterwards, all things which he has attached to the ~~earth~~, provided he leaves the property in the state in which he received it."

Amendment of
Section 64.

25. In section 64 of the said Regulation, the words "for a term of years" shall be omitted.

Amendment of
section 65.

26. In section 65 of the said Regulation

- (a) in clause (d), the words "for a term of years" shall be omitted; and
- (b) the words "Nothing in clause (c), or in clause (d), so far as it relates to the payment of future rent, applies in the case of an usufructuary mortgage" shall be omitted.

Insertion of
new section -
65 A in Act
~~IV of 1882.~~

Mortgagor's
power to
lease.

27. After section 65 of the said Regulation, the following section shall be inserted, namely:--

65.A. (1) Subject to the provisions of sub-section (2), a mortgagor, while lawfully in possession of the mortgaged property, shall have power to make leases thereof which shall be binding on the mortgagee.

(2) ~~Every~~ (a) Every such lease shall be such as ~~would~~ be made in the ordinary course of management of the property concerned, and in accordance with any local law, custom or usage.

(b) Every such lease shall reserve the best rent that can reasonably be obtained, and no premium shall be paid or promised and no rent shall be payable in advance.

(c) No such lease shall contain a covenant for renewal.

(d) Every such lease shall take effect from a date not later than six months from the date on which it is made.

(e) In the case of a lease of buildings, whether leased with or without the land on which they stand, the duration of the lease shall in no case exceed three years, and the lease shall contain a covenant for payment of the rent and a condition of re-entry on the rent not being paid within a time therein specified.

(3) The provisions of sub-section (1) apply only if and as far as a contrary

intention is not expressed in the mortgage-deed; and the provisions of sub-section (2) may be varied or extended by the mortgage-deed, and as so varied and extended, shall, as far as may be, operate in like manner and with all like incidents, effects and consequences, as if such variations or extensions were contained in that sub-section.

Amendment of
section 67.

28. In section 67 of the said ~~Act~~ Regulation.-

(a) for the word "payable" the word "due" shall be substituted;

(b) for the words "an order", wherever they occur, the words "a decree" shall be substituted; and

(c) for clause (a) the following clause shall be substituted, namely:--

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"(a) to authorize any mortgagee, other than a mortgagee by conditional sale or a mortgagee under an anomalous mortgage by the terms of which he is entitled to foreclose, to institute a suit for foreclosure or an usufructuary mortgagee as such, where he is authorized to appropriate the rents and profits ^{or any part of such rents & profits} in payment of the principal money or ^{partly} in lieu of interest ~~and~~ or partly in payment of the principal money, or a mortgagee by conditional sale as such to institute a suit for sale; or".

Insertion of
new section
67 A.

29. After section 67 of the said
Regulation, the following section shall
be inserted, namely:--

Mortgagee
when bound
to bring one
suit on several mort-
gages.

"67.A. A mortgagee who holds two or ~~more~~
more mortgages executed by the same ~~m~~
mortgagor in respect of each of which
he has a right to obtain the same kind
of decree under section 67, and who sues
to obtain such decree on any one of the
mortgages, shall, in the absence of a
contract to the contrary, be bound to
sue on all the mortgages in respect of
which the mortgage-money has become due.

Substitution
of new section
for section 68.

^{For} 30. ~~After~~ section 68 of the said
Regulation, the following section shall
be ~~inserted~~^{substituted}, namely:--

Right to
sue for
mortgage
money.

~~Mortgagee when
bound to bring
one suit on
several
mortgages~~

~~"68. (1) The mortgagee has a~~
right to sue for the mortgage money in
the following cases and no others, namely

(a) where the mortgagor binds him-
self to repay the same;

(b) where, by any cause other than
the wrongful act or default of the mort-
gagor or mortgagee, the mortgaged proper
is wholly or partially destroyed or the
security is rendered insufficient within
the meaning of section 66, and the mort-
gagee has given ~~the~~ the mortgagor a rea-
-ble opportunity of providing further
security enough to render the whole
security sufficient, and the mortgagor
has failed to do so;

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(c) where the mortgagee is deprived of the whole or part of his security by or in consequence of the wrongful act or default of the mortgagor;

(d) where, the mortgagee being entitled to possession of the mortgaged property, the mortgagor fails to deliver^{over} the same to him, or to secure the possession thereof to him without disturbance by the mortgagor or any person claiming under a title superior to that of the mortgagor;

Provided that, in the case referred to in clause (a), a transferee from the mortgagor or from his legal representative shall not be liable to be sued for the mortgage-money.

(2) Where a suit is brought under clause (a) or clause (b) of sub-section (1), the Court may, at its discretion, ~~may~~ stay the suit and all proceedings thereon notwithstanding any contract to the contrary, until the mortgagee has exhausted all his available remedies against the mortgaged property ~~or~~ what remains of it, unless the mortgagee abandons his security and, if necessary, re-transfers the mortgaged property."

Amendment of
section 71.

31. In section 71 of the said Regulation, the words "for a term of years" shall be omitted.

(c) where the mortgagee ~~is~~ being
entitled to possession of the mortgage

Amendment of
section 72.

32. In section 72 of the said Regulation.--

(a) for the words "When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property, he" the words "A mortgagee" shall be substituted.

(b) clause (a) shall be omitted;

(c) in clause (b), for the words "its preservation" the words "the preservation of the mortgaged property" shall be substituted;

(d) after the words "nine per cent per annum", the following proviso shall be inserted, namely;--

"Provided that the expenditure of money by the mortgagee under clause (b) or clause (c) shall not be deemed to be necessary unless the mortgagor has been called upon and has failed to take proper and timely steps to preserve the property or to support the title." and

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(e) for the words "a charge on the mortgaged property, in addition to the principal money, with the same priority and interest at the same rate" the following shall be substituted, namely:--

"added to the principal money with interest at the same rate as is payable on the principal money, or, where no such rate is fixed, at the rate of nine per cent per annum."

Substitution of
new section for
section 73.

33. For section 73 of the said Regulation the following section shall be substituted, namely:--

"73. (1) Where the mortgaged property or any part thereof or any interest therein is sold owing to failure to pay arrears of revenue or other charges of a public nature or rent due in respect of such property, and such failure did not arise from any default of the mortgagee, the mortgagee shall be entitled to claim payment of the mortgage-money, in whole or in part, out of any surplus of the sale proceeds remaining after payment of the arrears and of all charges and deductions directed by law.

(2) Where the mortgaged property or any part thereof or any interest therein is acquired under the Land Acquisition Regulation, 1894, or any other enactment for the time being in force providing for the compulsory acquisition of immovable property, the mortgagee shall be entitled to claim payment of the mortgage-money, in whole or in part, out of the amount due to the mortgagor as compensation,

(3) Such claims shall prevail against all other claims except those of prior encumbrances, and may be enforced notwithstanding that the principal money on the mortgage has not become due."

Omission of
sections 74 and 75.

34. Section 74 and section 75 of the said Regulation shall be omitted.

Amendment of
section 76.

35. In section 76 of the said
Regulation,

(a) in clause (c), after the words
"charges of a public nature" the words
"~~and~~ all rent" shall be inserted;

(b) in clause (h), after the words
"deducting the expenses" the words
"properly incurred for the management
of the property and the collection of
rents and profits and the other expenses"
shall be inserted, and the words "on the
~~principal~~
~~mortgage-money~~" shall be omitted; and

(c) in clause (i), the word "gross"
shall be omitted.

Omission of
section 80.

36. Section 80 of the said Regulation
shall be omitted.

Substitution of
new section for
section 81.

Subsection (1) 2
37. For section 81 of the said Regu-
lation, the following section shall be
substituted, namely:--

4
"81(1) If the owner of two or more
properties mortgages them to one person
and then mortgages one or more of the
properties to another person, the subse-
quent mortgagee is, in the absence of a
contract to the contrary, entitled to
have the prior mortgage-debt satisfied out of
of the property or properties not mortgaged
him, so far as the same will extend, but
not so as to prejudice the rights of the
prior mortgagee or of any other person
who has for consideration acquired an
interest

interest in any of the properties."

Amendment of
section 82.

38. In section 82 of the said Regulation.--

(a) for the first paragraph beginning with the words "Where several properties," and ending with the words "date of the mortgage" the following shall be substituted, namely:--

"Where property subject to a mortgage belongs to two or more persons having distinct and separate rights of ownership therein, the different shares in or parts of such property owned by such persons are in the absence of a contract to the contrary liable to contribute rateably to the debt secured by the mortgage, and, for the purpose of determining the rate at which each such share or part shall contribute, the value thereof shall be deemed to be its value at the date of the mortgage after deduction of the amount of any other mortgage or charge to which it may have been subject on that date" and

22
(b) in the third paragraph, ~~the~~ for the word "second" the word "subsequent" shall be substituted.

Amendment of
section 83.

39. In section 83 of the said Regulation.--

(a) for the words "has become payable" the words "payable in respect of any mortgage has become due" shall be substituted;

(b) for the words "if then in his possession or power" the words "and all documents in his possession or power relating to the mortgaged property" shall be substituted;

(c) after the word "mortgage-deed" where it occurs for the second time, the words "and all such other documents" shall be inserted; and

(d) the following paragraph shall ~~sh~~ be added after the words "such other person as aforesaid," namely:--

"Where the mortgagee is in possession of the mortgaged property, the Court shall, before paying to him the amount so deposited, direct him to deliver possession thereof to the mortgagor and at the cost of the mortgagor ~~xxxxxxx~~ either to retransfer the mortgaged property to the mortgagor or to such third person as the mortgagor may direct or to execute and (where the mortgage has been effected by a registered instrument) have registered an acknowledgment in writing that any right in derogation of the mortgagor's interest transferred to the mortgagee has been extinguished."

23
Amendment of
section 84.

40. In section 84 of the said Regulation.--

(a) after the words "from the date of the tender or" the words "in a case of a deposit, where no previous tender of such amount has been made", shall be inserted

(b) for the words "as the case may be" the following shall be substituted, namely:--

"and the notice required by section 83 has been served on the mortgagee:

"Provided that, where the mortgagor has deposited such amount without having made a previous tender thereof and has subsequently withdrawn the same or any part thereof interest on the principal money shall be payable from the date of $\frac{1}{2}$ such withdrawal"; and

(c) after the words "tender of the mortgage-money" the words "and such notice has not been given before the making of the tender or deposit, as the case may be" shall be added.

Substitution of
new section for
section 91.

Persons who may
sue for redemption.

41. For section 91 of the said Regulation, the following section shall be substituted, namely:--

"91. Besides the mortgagor, any of the following persons may redeem, or institute a suit for redemption of, the mortgaged property, namely:--

(a) any person (other than the mortgagee of the interest sought to be redeemed who has any interest in, or charge upon, the property mortgaged or in or upon the right to redeem the same;

(b) any surety for the payment of the mortgage-debt or any part thereof; or

(c) any creditor of the mortgagor who has in a suit for the administration of his estate

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estate obtained a decree for sale of the mortgaged property."

Insertion of
new section
92, 93 & 94
in Act IV of
1882.

Subrogation.

42. After section 91 of the said Regulation, the following section^s shall be inserted, namely:--

"92. Any of the persons referred to in section 91 (other than the mortgagor) and any co-mortgagor shall, on redeeming property subject to the mortgage, have, so far as regards redemption, foreclosure or sale of such property, the same rights as the mortgagee whose mortgage he redeems may have against the mortgagor or any other mortgagee.

The right conferred by this section is called the right of subrogation, and a person acquiring the same is said to be subrogated to the rights of the mortgagee whose mortgage he redeems.

25
A person who has advanced to a mortgagor money with which the mortgage has been redeemed shall be subrogated to the rights of the mortgagee whose mortgage has been redeemed, if the mortgagor has by a registered instrument agreed that such persons shall be so subrogated.

Nothing in this section shall be deemed to confer a right of subrogation on any person unless the mortgage in respect of which the right is claimed has been redeemed in full.

Prohibition of
tacking.

93. No mortgagee paying off a ~~nixx~~ prior mortgage, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his original security; and except in the case provided for by section 79, no mortgagee making a subsequent advance to the mortgagor, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his security for such subsequent advance.

Rights of
mesnee mort-
gagee.

94. Where a property is mortgaged for successive debts to successive mortgagees, a mesne mortgagee has the same rights against mortgagees posterior to himself as he has against the mortgagor."

Substitution of
new sections for
section 95.

43. For section 95 of the said Act the following sections shall be substituted, namely:--

Right of redeem-
ing co-mortgagor
to expenses.

"95. Where one of several mortgagors redeems the mortgaged property, he shall, in enforcing his right of subrogation under section 92 against his co-mortgagors, be entitled to add to the mortgage-money recoverable from them such proportion of the expenses properly incurred in such redemption as is attributable to their share in the property.

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Mortgage by
deposit of
title-deeds.

96. The provisions hereinbefore contained which apply to a simple mortgage shall, so far as may be, apply to a mortgage by deposit of title-deeds."

Amendment of
section 98.

44. In section 98 of the said
Regulation, for the words "a mortgage
not being a simple mortgage, a mortgage
by conditional sale, an usufructuary mort-
gage or an English mortgage or a combina-
tion of the first and third, or the second
and third, of such forms," *the words*
"an anomalous mortgage" shall
be substituted. *Regulation*
44. In section 100 of the said ~~Act~~

Amendment of
section 100.

(a) for the words "as to a mortgagor
shall, so far as may be, apply to the
owner of such property, and the provisions
of sections 81 and 82 shall, so far as may
be, apply to the person having such charge"
the words "which apply to a simple mortgage
shall, ~~as~~ so far as may be, apply to such
charge," shall be substituted; and

(b) after the words "in the execution
of his trust" the following words shall be
added, namely:--

"and save as otherwise expressly
provided by any law for the time being in
force, no charge shall be enforced against
any property in the hands of a person to
whom such property has been transferred
for consideration and without notice of the
charge."

Substitution of
new section for
section 101.

45. For section 101 of the said
Regulation, the following section shall be
substituted, namely:--

No merger in
case of subse-
quent encum-
brance.

"101. Any mortgagee of, or person
having a charge upon immovable property,
or any transferee from such mortgagee or
charge-holder, may purchase or otherwise
acquire

acquire the rights in the property of the mortgagor or owner, as the case may be, without thereby causing the mortgage or charge to be merged as between himself and any subsequent mortgagee of, or person having a subsequent charge upon, the same property; and no such subsequent mortgage or charge-holder shall be entitled to foreclose or sell such property without redeeming the prior mortgage or charge, or otherwise than subject thereto."

47

Amendment of
section 102.

46. In section 102 of the said Act.-

(a) for the words "Where the person or agent on whom such notice ~~sh~~ould be served cannot be found in the said district or is unknown" the words "Where no person or agent on whom such notice should be served can be found or is known", shall be substituted;

(b) after the words "and any notice served in compliance with such direction shall be deemed sufficient" the following proviso shall be inserted, namely:--

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"Provided that, in the case of a notice required by section 83, in the case of a deposit, the application shall be made to the court in which the deposit has been made

(c) for the words "Where the person or agent to whom such tender should be made cannot be found within the said district, or is unknown" the words "Where no person or agent to whom such tender should be made can be found or is known", shall be

substituted

substituted; and

(d) for the words "in such Court as last aforesaid" the words "in any Court in which a suit might be brought for redemption of the mortgaged property" shall be substituted.

Amendment of
section 106.

48. In section 106 of the said Regulation, for the words "tendered or delivered either personally to the party who is intended to be bound by it," the following shall be substituted, namely:--

"either ~~be~~ sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party."

Amendment of
section 107.

49. In section 107 of the said ^{Regulation} ~~Act~~, after the words "by delivery of possession", where they first occur, the following paragraph shall be inserted, namely:--

"Where a lease of immovable property is made by a registered instrument, such instrument or, where there are more instruments than one, each such instrument shall be executed by both the lessor and the lessee"



Amendment of
section 108.

50. In section 108 of the said Regulation.--

(a) in clause (h)--

(i) after the words "the lessee may" the words "even after the determination of the lease" shall be inserted; and

(ii) for the words "during the continuance of the lease," the words "whilst he is in possession of the property leased but not afterwards"

afterwards," shall be substituted; and

(b) in clause (o), after the words "or ~~sell~~" the words "or sell" shall be inserted, and after the words "or damage buildings," the words "belonging to the lessor or" shall be inserted.

Amendment of
section 111.

51. In clause (g) of section 111 of the said Regulation.--

(a) the words "or the lease shall become void" shall be omitted;

(b) after the words "title in himself the following shall be inserted/,namely:--

"or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event";

(c) for the words "either case" the words "any of these cases" shall be substituted; and

(d) for the words "does some act showing" the words "give notice in writing to the lessee of" shall be substituted/~~.and~~


Insertion of new
section 114 A.

52. After section 114 of the said Regulation, the following section shall be inserted, namely :--

Relief against
forfeiture in
certain other
cases.

114 A. Where a lease of immovable ^{property} has determined by forfeiture for a breach of an express condition which provides that on breach thereof the lessor may re-enter, no suit for ejectment shall lie unless and until the lessor has served on the lessee a notice in writing--

(a) specifying the particular breach complained of; and

(b) if the breach is capable of remedy, requiring the lessee to remedy the breach;

and the lessee fails within a reasonable time from the date of the service of the notice, to remedy the breach, if it is capable of remedy.

Nothing in this section shall apply to an express condition against the assigning, under-letting, parting with the possession, or disposing of the property leased, or to an express condition relating to forfeiture in case of non-payment of rent."

Substitution of new section for section 119.

53. For section 119 of the said Regulation, the following section shall be substituted, namely:--

Right of party deprived of thing received in exchange.

~~54x~~ "119. If any party to an exchange or any person claiming through or under such party is by reason of any defect in the title of the other party deprived of the thing or any part of the thing received by him in exchange, then, unless a contrary intention appears from the terms of the exchange, such other party is liable to him or any person claiming through or under him for loss caused thereby, or at the option of the person so deprived, for the return of the thing transferred, if still in the possession of such other party or his legal representative or a transferee from him without consideration."

31

Amendment of
section 128.

54. In section 128 of the said Act after the words "debts due by" the words "and liabilities of" shall be inserted.

Amendment of
section 130.

55. In section 130 of the said Regulation:--

after the words "The transfer of an amicable claim" the words "whether with or without consideration" shall be inserted.

Saving clause.

56. Nothing in any of the following provisions of this Regulation namely sections ~~2, 6, 7, 12, 15, 16, 24, 27,~~ clause (c) of section ~~27,~~ sections ~~29, 30~~ ~~40,~~ 47, 49, ~~51 & 52,~~ 53 & 55 shall be deemed in any way to affect—

(a) the terms or incidents of any transfer of property made or effected before the 1 day of

(b) the validity, invalidity, effect or consequences of anything already done or suffered before the aforesaid date,

(c) any right, title, obligation or liability already acquired, accrued or incurred before such date, or

(d) any remedy or proceeding in respect of such right, title, obligation or liability and nothing in any other provision of the ^{Regulation} ~~Act~~ shall render invalid or in any way affect anything already done before the first day of.....in any proceeding

pending in a Court on that date; and any such remedy and any such proceeding as herein referred to may be enforced, instituted or continued, as the case may be,

if this ^{Regulation} ~~Act~~ had not been passed.

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4 27/8/36

Pres. Order 12 70

STATEMENT OF OBJECTS AND REASONS.

The Transfer of Property Regulation in Mysore was passed in 1918 on the lines of the British Indian Act of 1882 and all amendments passed there up to 1918 were taken into consideration. The British Indian Act has subsequently been amended largely by Act XX of 1929 which has made substantial changes in ~~xx~~ many sections and has set at rest points on which there have been conflicting decisions. It is considered desirable to adopt these amendments as some of them are beneficial and it is convenient not to have a law in this respect different from that in British India unless dictated by local conditions. A bill has accordingly been drafted.

In the bill it has been sought to remedy ~~any~~ defects which have led to inconvenience or anomalous results and to incorporate new principles of importance which have been judicially recognised.

33 *mic* ~~[Detailed explanations for the amendments proposed are given in the notes or clauses appended below.]~~

however,

Special attention is, drawn to the following ~~points of~~ principles included in the bill :

1. Provision is made so that registration will amount to notice of the document registered;

2. Constructive notice to an agent of a fact material to the course of business in which the agent is engaged will be notice of that fact to the principal. The agent must not have fraudulently concealed the fact from his principal;

3. The validity of transfers in favour of a class, when some members of that class are unable to take, is recognised so that they may enure to the benefit of those members of the class who are capable of taking ;

4. The doctrine of part performance is recognised. By this doctrine the transferee is protected where the contract to transfer followed by part performance and the contract is made enforceable even though the contract is not registered. At the same time, care is taken to see that the law of registration is not evaded;

5. In a mortgage by conditional sale, the condition must be embodied in the same deed;

6. Provision is made to require the mortgagee to transfer, when so required, the mortgage debt to a third person named by the mortgagor;

7. It is made clear that the mortgagor has a right to inspect and take copies of the documents of title relating to the mortgaged property which are in the possession of the mortgagee;

8. It is also made clear that the mortgagor has the option to redeem several mortgages to the same mortgagee separately or simultaneously;

9. There is no express provision in the Regulation allowing a mortgagee to make necessary improvements to the mortgaged property. This is now provided for;

10. Statutory recognition is given to the mortgagor's power to lease so as to bind the mortgagee subject to certain safeguards;

11. Remedy of foreclosure is abolished in the case of all mortgages except a mortgage by conditional sale or an anomalous mortgage providing expressly for foreclosure;

12. Mortgagee is obliged to enforce several mortgages ~~mortgages~~ by the same mortgagor simultaneously in the absence of contract to the contrary;

Provision is made for
13. The court ~~may~~^{to} stay a suit for enforcing the personal remedy against the mortgagor till the mortgagee has exhausted his remedies against the mortgaged property;

14. The principle of subrogation is extended so that all persons who have an interest in the mortgaged property except the mortgagor will be entitled to be substituted in the place of the creditor who is paid off;

15. The law of merger is modified so that the creditor may have the benefit of keeping his own incumbrance as well as those which he has paid off alive against subsequent incumbrances;

16. Leases will be required to be executed

Clause 2.- Notice as defined in Section 3 includes both actual and constructive notice. This gave rise to a conflict of decisions in British India whether registration of a document is of itself constructive notice of the transaction effected by the document. Since the system of registration has been in existence in the State for over 70 years and is of general application, One of the objects for which instruments are required to be registered would be defeated if registration is to be held as not implying notice. Under the Transfer of Property Regulation most of the transfers of immovable property have to be effected by registered instruments and some few where property is of low value are allowed to be effected by delivery of possession. The means of search in registration offices are within the powers of a person taking a transfer. It is therefore desirable that express provision should be made in the Regulation itself making it clear that registration of an instrument relating to immovable property amounts to notice of the instrument from the date of the instrument or from the date on which a memorandum of a registered instrument has been filed by a Sub Registrar in whose jurisdiction a property is situated when it has been registered in another jurisdiction. This is provided for in Explanation I of the definition of " Notice."

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Explanation II provides that the person dealing with any immovable property shall be deemed to have ~~given~~ notice of the title of the person who for the time being is in actual possession. There was some uncertainty in regard to this. It does not seem reasonable that a person entering into a transaction relating to immovable property should ignore the question

question of possession or neglect to inquire into the title of the person in actual possession of such property. Notice in this case is not extended to possession which is merely of a constructive nature.

H The last portion of the existing definition of notice which relates to notice through an agent is defective in as much as it may be construed as being restricted to cases of express notice.

Explanation III amends the law as to notice to an agent by widening the definition so as to include a fact of which the agent has notice whether express or constructive. This is in accordance with the well established principle that the agent stands in the place of his principal with reference to the business on hand so that his acts and knowledge are the acts and knowledge of his principal. If notice to the agent whether actual or constructive is not made notice to the principal, notice may be avoided in every case by employing agents. In the amendment there are safeguards to the effect that the notice must be of a fact which is material to the course of the business in which the agent is engaged and that the agent must not fraudulently have - concealed the fact from his principal.

38
Clause 3. - This provides for the case where a man makes a settlement of his property in trust and constitutes himself as a trustee. An explanation has been added to make it clear that the words " living person " include corporations and other associations of persons.

Clause 4. - A right to receive maintenance is a personal right and it is in accordance with public policy that these rights which are generally created for the maintenance or personal enjoyment of a qualified owner should not ~~to~~ be alienable. Hence a new clause is added to section 6. This does not apply to arrears of maintenance which have accrued due.

Clause 5. - Sections 11 and 40 of the Regulation refer to affirmative and negative covenants in a transfer. Section 11 refers to rights as between a transferor and a transferee while Section 40 relates to the rights of third parties against transferees. The words "to compel its enjoyment" used in the second paragraph of section 11 and in the first paragraph of Section 40 indicate that affirmative covenants for the beneficial enjoyment of one piece of the property of which the other piece has been transferred can in all cases be enforced and this is based on the principle in the English case of Tuck VS Moxhay. But later English decisions which have been followed in India made it clear that only covenants of a negative character and imposing no pecuniary obligation can be enforced under the rule in Tuck's case against purchasers from the transferee or covenantor. It is therefore proposed to amend the second paragraph of Section 11 and the first paragraph of section 40 so as to make it clear that, although an affirmative covenant is not by itself invalid as between a transferor and a transferee (Section 11) negative or restrictive covenants only can be specifically enforced against a purchaser from a transferee.



Clause 6.- Section 15 is so amended as to make a gift to a class, some of whom are or may be incapacitated from taking, enure for the benefit of those members of the class who are capable of taking. This is in accordance with the tendency of decisions later than *Leake V Robinson* the rule in which was embodied in present section 15.

Clause 7. - The amendment of Section 15 renders a reference to that section in section 16 unnecessary. But provision is however made for the case where a transfer fails as to all the members of the class by reason of the rules in Sections 13 and 14.

Section 18 relates to the rule against accumulations and allows accumulations for a period of one year only in certain cases. In England, the *Thellusson* Act allowed a much longer period. Even in India in cases which were not governed by Section 18, the rule followed was that if there was nothing illegal or unreasonable in a direction to accumulate, such direction should be given effect to. It is desirable to allow accumulations for longer periods to lay down definitely on the lines of the English law the periods and the objects for which a condition as to accumulation should be held valid. It is also desirable to accept certain well recognised exceptions in law such as those relating to provisions for the payment of debts, raising portions for children and the repairs to the property transferred. The restrictions contained in sections 14 and 16 and also the restrictions as to accumulations under section 18 should not apply to charities. Section 18 dealing with accumulations should come

W.S.

come after section 16 and it is numbered 17. The present section 17 which deals with charities is numbered 18.

Clause 8. - Section 39 now provides that a right to receive maintenance or a provision for advancement or marriage from the profits of immovable property can be enforced against the transferee if the transfer has been made with the intention of defeating the right and the transferee has notice of the intention. In actual practice it will be very difficult to adduce proof of mere intention. As it is desirable to protect persons entitled to maintenance or for whom provision for advancement has been made, it is necessary that the section be amended so that there may be no necessity to refer to the transferor's intention to defeat or for the transferee to be aware of such intention. As the illustration to the section is not consistent with the section^{as} it does not make any reference to the intention of transferor, it is omitted.

Clause 9. - The amendment makes it clear that only negative or restrictive covenants can be specifically enforced against a third person as has been explained in the note to clause 5.

Clause 10.- This makes it clear that erroneous representation may either be innocent or tainted with fraud.

Clause 11. - The use of words " active prosecution " and " contentious " has given rise to difficulties in construing Section 52. It has

has given room for a difference of view as to when suit may be said to be in active prosecution and when it may be said to be contentious. The word "pendency" is therefore substituted for "active prosecution" and the word "contentious" omitted. An explanation is added to make it clear when the pendency of a suit or proceeding shall be deemed to commence and when it shall be deemed to end. Collusive suits are excluded as they are not really suits at all, but merely a pretence. Further to attract the doctrine of lis pendens the suit must be pending in a court of competent jurisdiction and this has been made clear in the explanation.

Clause 12. - The section has been remodelled. The first paragraph of the old section referred both to transfers made with intent to defraud creditors and ^{to} transfers made in fraud of other transferees^{ee}. It is desirable to split the section into two parts, subsection (1) referring to creditors and subsection (2) to other transferees, on the lines of the English law of Property Act, 1925. This division eliminates two difficulties in the construction of the present section. The first difficulty is that paragraph 3 can hardly apply to a case of contest between a prior voluntary transfer and a subsequent transfer for consideration. The second difficulty is in the use of the words "may be presumed" in the second paragraph which are being interpreted in different ways in the two cases. This inconsistency has been removed by the division of the section into two parts and the inclusion of a special provision in the last paragraph of the second subsection for cases of conflict between a transfer

transfer without consideration and a subsequent transfer with consideration.

Paragraph 2 of present section 53 lays down a rule of evidence which has also given rise to considerable difficulty in interpretation. The general trend of decisions was that the court should decide in each case whether on all the circumstances the intention of the transferor was to defraud, defeat or delay his creditors and this is also the course of legislation. It is therefore proposed to delete para 2 of Section 53 and to have the determination of the question of intent to be dealt with according to the ordinary rules of evidence.

The reference to prior transferees and co-owners or other persons having an interest ' is superfluous as it is not clear in what cases they can be defeated by a subsequent voluntary transfer. The corresponding words have therefore been omitted.

It has been provided that the law of insolvency shall not be affected. To protect the transferee from being exposed to a multiplicity of suits, it is desirable to provide that a suit by a creditor must be a representative suit on behalf of all the creditors, and accordingly paragraph 3 has been inserted in subsection (1)

Clause 13.- Courts have been applying the equitable doctrine of part performance to cases of transfer which have not been validated by registration on the ground that when one party has executed his part of the agreement in the confidence that the other party would do the same, it would be inequitable and

and a fraud, if the latter should refuse, to suffer this refusal to work to the prejudice of the former. Ignorant transferees in the country who have partly performed the contract require some measure of protection. Statutory recognition is therefore given by this clause to the doctrine of part performance. At the same time certain safeguards as mentioned below are provided in order that the law of registration may not be evaded and that the introduction of the doctrine does not lead to perjuries and frauds which it is the object of the doctrine to prevent.

(1) It is provided that the agreement should be in writing.

(2) The transferee should take possession of the property or if already in possession should, in addition to continuing in possession, do some act in furtherance of the contract.

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(3) The transferor is debarred from enforcing against a transferee any right except such as are expressly provided by the contract. The mutual covenants will be operative though no title has passed. This will necessitate the completion of the transfer according to law by execution and registration in order that the transferee may get a marketable title. Thus the law of registration will not be evaded.

(4) There is a further safeguard in that the equities arising out of part performance may not affect the rights of a transferee for value without notice. It would be necessary therefore for the first transferee to have his transfer perfected according to law by registration and thereby acquire an indefeasible title.

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Clause 14. - The expression "material defect" in section 55 (1) (a) has been held to include a defect in the title of the seller. Statutory effect is given to this decision by inserting the words "as in the seller's title thereto".

In sub clause (b) of clause (4) of the same section, the unpaid seller's charge available against the buyer is made enforceable not only against the buyer but against a transferee from the buyer with notice of the non-payment or a gratuitous transferee, as such lien could otherwise have been defeated by the buyer parting with the property. This clause is also ~~wx~~ silent as to the date from which interest on the unpaid purchase money should run. It is but fair that interest should run from the date when the buyer is put in possession.

45 Sub clause (b) of clause (6) of the same section provides that a buyer's lien for price prepaid can be enforced against the seller and other persons claiming under him with notice of the payment. Gratuitous transferees and legal representatives of the seller could escape liability by pleading that they had no notice. It is proposed to amend the clause by omitting the words "with notice of the payment" so as to permit of the buyer's lien for price prepaid being enforced against all persons claiming under the seller.

Clause 15. - Section 56 as amended provides for the right of marshalling being enforced not only against the seller but also against the mortgagee of the seller.

Clause 16.- It is very often difficult to distinguish a mortgage by conditional sale from sales with a condition of re-purchase. The nature of the transaction can only be determined by finding out the intention of the parties. In order to avoid the difficulty it is desirable to lay down a statutory test by which the intention is to be gathered. A proviso is added to clause (c) of section 58 to the effect that no transaction shall be deemed to be a mortgage by conditional sale unless the ~~existing~~ condition is embodied in the document purporting to effect the sale.

In sub clause (d) it is made clear that a case where a mortgagee who is entitled to possession but has not received possession or a case where the mortgagee is entitled to appropriate a portion only of the income is a usufructuary mortgage. The definition of a mortgage by deposit of title deeds which is now in section 59 and the definition of an anomalous mortgage which is now in section 98 are brought under section 58 which contains the definitions of the several kinds of mortgages.

The term Bank has been extended so as to include foreign Banks working in India to enable them also to deal in mortgages by deposit of title deeds.
Clause 17. - These amendments are consequent

on the transfer of the definition of a mortgage by deposit of title deeds to Section 58.

Clause 18. - This makes it clear that the words " mortgagor " and " mortgagee " include all persons deriving title under them.

Clause 19. - The word " payable " gave rise to a diversity of opinion and it was held in some case that a mortgagor could redeem before the period stipulated for redemption. The contrary view which is the better one is that the mortgagor cannot redeem before the mortgage money has become due. In order to remove the doubt, the word " due " has been substituted for the word " payable ".

It is also made clear that on redemption a mortgagee should deliver not only the mortgage deed but all documents in his possession relating to the mortgage. The word " decree " has been substituted for the word " order " as the old practice of ~~granting~~^{passing} orders absolute has been abolished. By the addition of the word " only " in the last paragraph, it is made clear that the case mentioned therein is the only exception to the rule of the indivisibility of ^a mortgage.

Clause 20. - Provision is made to require the mortgagee at the instance of the mortgagor to assign the mortgage to a third person. New section 60 B recognises the right of the mortgagor to inspect and take copies of the documents of title in the possession of the mortgagee.

Clause 21. - The wording of the section has been recast so as to make it clear that it is left to the option of the mortgagor to redeem any one or more of the mortgages.

Clause 22. - These amendments are in consonance with the amendments to section 60 and 58 (d).

Clause 23. - Provides for cases where the mortgage deed is silent as to the rate of interest.

Clause 24. - Since there is no express provision in the Regulation dealing with improvements to the mortgaged property, this section has been added. The mortgagee will be entitled to compensation ~~wix~~ when the improvements are made to preserve the property from deterioration or to prevent the security from becoming insufficient. Provision is made for a mortgagee in possession to remove fixtures as a lessee can do.

Clause 27. - In the absence of an express provision in the Regulation the question is raised whether the mortgagor in possession is competent to grant a lease of the mortgaged property during the continuance of the mortgage and whether such ^a lease is binding on the mortgagee. It is therefore proposed to expressly provide that the mortgagor shall, subject to the express conditions of the mortgage deed, be entitled to grant a lease of the mortgaged property. Certain restrictions are however imposed to safeguard the interests of the mortgagee.

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Clause 28. - It is desirable that the drastic remedy of foreclosure is used only in exceptional cases. It is therefore proposed to confine the remedy to the case of a mortgagee by conditional sale or of a mortgagee under an anomalous mortgage whereby the express terms of which the parties have

have stipulated for foreclosure, and to disallow it in other cases.

Clause 29. - When a mortgagee holds several mortgages in respect of the same or different properties, it will be prejudicial to the mortgagor if the mortgagee is allowed to enforce one mortgage and keep the other mortgages alive. The principle of consolidation is proposed to be applied to the mortgagee and he should enforce all the mortgages or none at all unless there is a contract to the contrary

Clause 30. - The section has been recast so as to remove certain doubts that had arisen. The personal remedy declared by section 68 is additional to the remedies provided in section 67 and this concurrent remedy sometimes leads to abuse. It is therefore proposed to provide that in clauses (a) and (b) of subsection (1) the mortgagee should exhaust all his available remedies against the mortgaged property before he seeks to pursue the personal remedy against the mortgagor unless the mortgagee abandons his security.

Clause 32. - It is equitable that a mortgagee though not in possession should be entitled to spend such money as may be necessary for the purposes mentioned in this section. 72

The purpose in clause (a) is transferred to section 76 (h) which relates to a mortgagee in possession.

Clause 33. - The new section extends to cases of sale for arrears of other charges of a public nature and of acquisition under the Land Acquisition Regulation. The word "charge" is also avoided as it relates to immovable property and is enforceable as a simple mortgage. The mortgagee will be entitled to claim payment out of the surplus fund or compensation money. Provision is also made for priorities.

Clause 34. - Sections 74 and 75 are deleted and the incidents therein which are based on the principle of subrogation are embodied in new sections 92 and 94

Clause 36. - The principle of tacking embodied in section 80 is transferred to section 93 to come after 'subrogation'.

Clause 37. - The change is merely verbal.

Clause 38. - The principle of contribution is made applicable by this amendment to cases where the mortgaged property is subsequently divided into distinct and separate portions held in severally. It further fixes the date of the mortgage as the date at which the valuation for the purpose of contribution should be made.

Clause 39. - Provision is made requiring the mortgagee to file all documents of title and also a draft reconveyance or an acknowledgment before he is entitled to draw the money.

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Clause 40. - A proviso has been added making it clear that where the mortgagor has deposited the amount without a previous tender and has subsequently withdrawn it, interest shall be payable from date of withdrawal. It is not reasonable that the mortgagor should withdraw the money and at the same time get the benefit of cessation of interest.

Clause 41. - Section 91 has been remodelled omitting what is considered superfluous and combining the clauses where suitable. An attachment does not create an interest and there is no reason why an attaching creditor should have the right of redemption

Clause 42. - Sections 74 and 75 have been omitted and the principle of subro^gation is provided for in the new section 92 and applied to all persons having an interest in the mortgaged property, i.e., all those referred to in Section 91 as having the right of redemption. The section gives a full and extended expression to the doctrine of subrogation. A person advancing money for redeeming a mortgage is given the right of subrogation, but it is provided that the payment should however have been made under an agreement to subrogate reduced to writing and registered.

51
As the principle of tacking is closely allied to that of subrogation, section 80 is renumbered as 93 and placed after section 92.

Section 94 provides for the doctrine of foreclosing down which was partly contained in section 75.

Clause 44. - As there is no clear provision regarding the rights and liabilities of parties to a mortgage by deposit of title deeds, Section 96 has been added.

Clause 45. - There has been a doubt whether a change can be enforced against a transferee for consideration without notice. It is made clear that it cannot be enforced against such transferees.

Clause 46. - It may generally be taken to be the intention of a creditor and to his benefit to keep his own incumbrances as well as those which he has paid off alive. The section is accordingly amended.

Clause 48. - Service by post is a recognised mode of service, and provision is made for serving a notice by post.

Clause 49. - Since a lease contains covenants both on the part of the lessor and the lessee, it is desirable that it should be executed by both.

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Clause 52. - There is no provision now for relief against forfeiture where it accrues on breach of an express condition which provides that on breach thereof the lessor may reenter although the breach may be capable of easy remedy. It is desirable that such a provision should be introduced here.

Clause 53. - The section is widened in its scope. It provides for the rights of the transferee also. It is also provided that the

the party can get back the thing transferred only
if it is still in the possession of the other party

Clause 56. - In this clause the provisions
of the bill which are not to have retrospective
operation are specified.

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THE TRANSFER OF PROPERTY (AMENDMENT)
SUPPLEMENTARY BILL.

A Bill to supplement the Transfer of
Property (Amendment) Regulation.

Whereas by reason of the passing of the
Transfer of Property (Amendment) Regulation it
is expedient that certain amendments should be
made in certain other enactments; it is hereby
enacted as follows:--

Short title
and commencement.

1 (1) This Regulation may be called **THE TRANS
FER OF PROPERTY (AMENDMENT) SUPPLEMENTARY REGU-
LATION, 193**

(2) It shall come into force on the 1st
day of

Insertion of new sec-
tion 27-A.

2. After section 27 of the Specific Relief
Regulation, ~~.....~~ ^{Act 1877}, as in force in Mysore, the
following section shall be inserted, namely:-

Specific performance
in case of part per-
formance of contract
to lease.

"27-A. Subject to the provisions of this
Chapter, where a contract to lease immoveable
property is made in writing signed by the parti
thereto or on their behalf, either party may,
notwithstanding that the contract, though re-
quired to be registered, has not been registere
sue the other for specific performance of the
contract if, -

(a) where specific performance is claimed by
the lessor, he has ~~been~~ delivered possession of
the property to the lessee in part performance

(b) where specific performance is claimed by the lessee, he has in part performance of the contract, taken possession of the property, or being already in possession, continues in possession in part performance of the contract, and has done some act in furtherance of the contract;

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.

This section applies to contracts to lease executed after the first day of ~~April 1936~~.

Amendment of *Mysore Registration Regn.*

3. (1) In section 17 of the Mysore Registration Regulation, 1903, -

(a) after clause (d) of ~~sub-section (1)~~ the following clause shall be added, namely:-

"^{dd}~~(e)~~ non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested ~~on~~ contingent, of the value of one hundred rupees and upwards to or in immoveable property"; and

(b) in clause (j) of ~~paragraph (3)~~ for the words "and awards" the words "except decrees or orders expressed to be made on a compromise and comprising immoveable property other than that which is the subject matter of the suit or proceeding" shall be substituted.

(2). In section 48 of the same Regulation,

after the words "or followed by delivery of possession" the following words shall be added, namely:-

"and the same constitutes a valid transfer ~~and~~ under any law for the time being in force:

Provided that a mortgage by deposit of title deeds as defined in section 58 of the Transfer of Property Regulation, shall take effect against any mortgage-deed subsequently executed and registered which relates to the same property,"

(3) In section 49 of the same Regulation-

(a) after the word and figures "section ~~22~~ 17" the words "or by any provision of the Transfer of Property Regulation" shall be inserted; and

(b) to that section the following proviso shall be added, namely:-

"Provided that an unregistered document affecting immoveable property and required by this Regulation or the Transfer of Property Regulation to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief ~~Act~~ Act, 1877 Regulation, as in force in Mysore, or as evidence of part performance of a contract for the purposes of section 53-A of the Transfer of Property Regulation or as evidence of any collateral transaction not required to be effected by registered instrument."

Indran
~~Mysore~~

4(1) In section 102 of the ~~Indian~~ Act Succession ~~Act~~ Regulation, 1865, as in force in Mysore,

~~(a) for the words "wholly void" the words~~

(a) for the words "wholly void" the words "void in regard to those persons only and not in regard to the whole class" shall be substituted;

(b) in Illustration (a) for the words "and as it is given to all his children as a class, it is not good as to any division of that class but is wholly void" the following words shall be substituted, namely:-

"and in regard to those who do not attain the age of 25 within 18 years after A's death, but is operative in regard to the other children of A"; and

(c) in Illustration (b), for the words "The mention of B, C and D by name does not prevent the bequest from being ~~xxxxx~~ regarded as a bequest to a class, and the bequest is wholly void" the following words shall be substituted, namely:-

"Although the mention of B, C and D does not prevent the bequest from being regarded as a bequest to a class, it is not wholly void. It is operative as regards any of the children B, C or D, who attains the age of 25 within 18 years after A's death."

(2) for section 103 of the same ^{Act} ~~Regulation~~, the following section shall be substituted, namely:-

"103. Where by reason of any of the rules contained in sections 100 and 101 any bequest in favour of a person or of a class of persons is void in regard to such person~~s~~ or the whole of such class, any bequest contained in the same will and intended to take effect after or upon failure of such prior bequest is also void."

(3) For section 104 of the same Act and the Illustration thereto, the following section

Bequest to take effect on failure of prior bequest.

shall be substituted, namely:-

Effect of direction
for accumulation.

"104. (1) Where the terms of a will direct that the income arising from any property shall be accumulated either wholly or in part during any period longer than a period of eighteen years from the death of the testator, such direction shall, save as hereinafter provided, be void to the extent to which the period during which the accumulation is directed exceeds the aforesaid period, and at the ~~xxxxxxxxxxxxxxxx~~ end of such period of eighteen years the property and the income thereof shall be disposed of as if the period during which the accumulation has been directed to be made had elapsed.

(2) This section shall not affect any direction for accumulation for the purpose of -

(i) the payment of the debts of the testator or any other person taking any interest under the will, or

(ii) the provision of portions for children or remoter issue of the testator or of any other person taking any interest under the will, or

(iii) the preservation or maintenance of any property bequeathed;

and such direction may be made accordingly.

Savings.

5. ~~Save as provided in sub-section (2)~~
Nothing in this Regulation shall be deemed to affect -

(a) the terms or incidents of any transfer or disposition of property made or effected before the first day of

(b) the validity, invalidity, effect or

consequences of anything already done or
suffered before the aforesaid date;

(c) any right, title, obligation or liability
already acquired, accrued or incurred before
such date;

(d) any remedy or proceeding in respect of
such right, title, obligation or liability; or

(e) anything done in the course of any pro-
ceedings/pending in any Court on the aforesaid
date;

and any such remedy or proceeding may be enforced
instituted or continued, as the case may be, as
if this Regulation had not been passed.

STATEMENT OF OBJECTS AND REASONS.

Consequent on the amendments proposed to the Transfer of Property Regulation, it has become necessary to introduce amendments to (1) Specific Relief Act, (2) Registration Regulation, (3) Succession Act, (4) Limitation Regulation and (5) Code of Civil Procedure.

Amendments to the Specific Relief Act give effect to the principle of part performance embodied in the new section 53 A of the Transfer of Property Regulation.

Registration Regulation is amended so that assignments of decrees, orders and awards relating to immovable property may be always registered. Courts will be empowered to admit ^{un}~~the~~/registered documents in evidence in giving effect to the doctrine of part performance.

Succession Act is amended in conformity with the amendments to sections 15 to 18 of the Transfer of Property Regulation.

Amendment to the Limitation Regulation providing for a period of limitation governing suits to recover the money due on a mortgage by the deposit of title deeds is included in the Bill to amend the Limitation Regulation proposed to be introduced.

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The amendments to the Code of Civil Procedure relate to Order XXXIV of the First Schedule thereto and the forms in Appendix D. These may, in due course, be made by the High Court itself under their rule-making power, and they are not therefore included in the bill.

Detailed explanations of the several clauses are given below:

Clause 2.- Consequent on the statutory recognition of part performance in section 53A of the Transfer of Property Regulation, it is necessary to insert a new section in the Specific Relief Act providing for specific performance in cases where the doctrine of part performance is applicable.

Clause 3. - Amendment of the Registration Regulation : A new clause (dd) is inserted in section 17 of the Registration Regulation so as to make it definite that the assignment of a mortgage decree requires registration on the ground that the right to sell immovable property which is given by the assignment is a right or interest in the property.

Clause (j) of section 17 is amended so that the exemption from registration will not apply to decrees and orders expressed to be made on a compromise and comprising immovable properties outside the scope of the suit or proceeding as it would otherwise lead to hardships.

The word ' awards ' is also omitted as non-registration of awards affecting immovable property creates the same hardship.

It is proposed to amend section 48 of the Registration Regulation so as to make it clear that only those transactions which can validly be made by an oral agreement and by delivery of possession according to the provisions of any law for the time being in force and also mortgages by deposit of title deeds cannot be supplanted by subsequent registered instruments.

The doctrine of part performance having been recognised, unregistered documents have to be admitted in evidence to prove part performance. Hence section 49 of the Registration Regulation is amended. It is also made clear that documents which require to be registered but have not been registered can be admitted in evidence for a collateral purpose.

Clause 4.- The amendments proposed in this clause to the Succession Act are consequential upon those proposed to be made in sections 15, 16 and 18 of the Transfer of Property Regulation.

Sub. 5/para 15
& para 38

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STATEMENT OF GENERAL PRINCIPLES.

^{of}
1st Bill to amend the
Transfer of Property
Regulation

The Transfer of Property Regulation in Mysore was passed in 1918 on the lines of the British Indian Act of 1882 and all amendments ^{passed there up to 1918} were taken into consideration. The British Indian Act has subsequently been amended largely by Act XX of 1929 which ~~has~~ made substantial changes in many sections and ~~has~~ set at rest points on which there had been conflicting decisions. It is considered desirable to adopt these amendments as some of them are beneficial and ^{also} it is convenient ~~not~~ to have a law in this respect ^{on the same lines as} different from that in British India ^{with suitable variations} unless dictated by local conditions. A ^{Bill} has accordingly been drafted.

In the ^{Bill} it has been sought to remedy ~~the~~ defects which have led to inconvenience or anomalous results and to incorporate new principles of importance which have been judicially recognised.

Special attention is drawn to the following ~~points~~ ^{points} or principles included in the bill :

1. Provision is made so that registration will amount to notice of the document registered;

2. Constructive notice to an agent of a fact material to the course of business in which the agent is engaged will be notice of that fact to the principal. The agent must not have fraudulently concealed the fact from his principal;

3. The validity of transfers in favour of a class, ^{affirmative} when some members of that class are unable to take, ^{affirmative} is recognised so that they may enure to the benefit of those members of the class who are capable of taking ^{performance};

4. The doctrine of part performance is recognised. ~~By this doctrine the transferee is protected where the contract to transfer is followed by part performance and the contract is made enforceable even though the contract is not registered.~~ ^{provision is} At the same time, care ^{made for the purpose of securing} is taken to see that the law of registration is not ~~evaded~~;

5. In a mortgage by conditional sale, the condition must be embodied in the same deed, ^{mortgage}

6. Provision is made to require the mortgagee to transfer, when so required, the mortgage debt to a third person named by the mortgagor;

7. It is made clear that the mortgagor has a right to inspect and take copies of the documents of title relating to the mortgaged property which are in the possession of the mortgagee;

8. It is also made clear that the mortgagor has the option to redeem several mortgages to the same mortgagee separately or simultaneously;

9. There is no express provision in the Regulation allowing a mortgagee to make necessary improvements to the mortgaged property. This is now provided for;

10. Statutory recognition is given to the mortgagor's power to lease so as to bind the mortgagee subject to certain safeguards;

11. Remedy of foreclosure is abolished in the case of all mortgages except a mortgage by conditional sale or an anomalous mortgage providing expressly for foreclosure;

12. Mortgagee is obliged to enforce several mortgages ~~mortgages~~ by the same mortgagor simultaneously in the absence of contract to the contrary,

13. ^{Provision is made for the} The court ~~may~~ stay a suit for enforcing the personal remedy against the mortgagor till the mortgagee has exhausted his remedies against the mortgaged property;

14. The principle of subrogation is extended so that all persons who have an interest in the mortgaged property except the mortgagor will be entitled to be substituted in the place of the creditor who is paid off;

15. The law of merger is modified so that the creditor may have the benefit of keeping his own incumbrance as well as those which he has paid off alive against subsequent incumbrances;

16. Leases will be required to be executed by both parties.

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STATEMENT OF GENERAL PRINCIPLES OF THE BILL
TO AMEND THE TRANSFER OF PROPERTY REGULA-
TION.

* * * * *

The Transfer of Property Regulation in Mysore was passed in 1918 on the lines of the British Indian Act of 1882 and all amendments passed in British India up to 1918 were taken into consideration. The British Indian Act has subsequently been amended more particularly by Act XX of 1929 which made substantial changes in many sections and set at rest points on which there had been conflicting decisions. It is considered desirable to adopt these amendments as it is also convenient to have a law in this respect on the same lines as in British India with suitable variation dictated by local conditions. A Bill has accordingly been drafted.

In the Bill it has been sought to remedy only defects which have led to inconvenience or anomalous results and to incorporate new principles of importance which have been judicially recognised.

Special attention is drawn to the following principles included in the bill:-

1. Provision is made so that registration will amount to notice of the document registered;

2. Constructive notice to an agent of a fact material to the course of business in which the agent is engaged will be notice of that fact to the principal. The agent must not have fraudulently concealed the fact from his principal;

3. The validity of transfers in favour of a class of persons when some members of that class are unable to take ~~possession~~ ^{possession}, is recognised so that they may ensure to the benefit of those members of the class who are capable of taking ~~possession~~ ^{possession};

4. The doctrine of part performance is recognised

At the same time provision is made for the purpose of ~~ensuring~~ securing ^{that} the law of registration is not evaded;

5. In a mortgage by conditional sale, the condition must be embodied in the mortgage deed;

6. Provision is made to require a mortgaged to transfer, when so required, the mortgage debt to a third person named by the mortgagor;

7. It is made clear that the mortgagor has a right to inspect and take copies of the documents of title relating to the mortgaged property which are in the possession of the mortgagee;

8. It is also made clear that the mortgagor has the option to redeem several mortgages to the same mortgagee separately or simultaneously as he may think fit;

9. There is no express provision in the Regulation allowing a mortgagee to make necessary improvements to the mortgaged property. This is now provided for;

10. Statutory recognition is given to the mortgagor's power to lease in such a way as to bind the mortgagee subject to certain safeguards;

11. The remedy of foreclosure is abolished in the case of all mortgages except mortgages by conditional sale or anomalous mortgage; providing expressly for foreclosure;

12. The mortgagee is obliged to enforce several mortgages by the same mortgagor simultaneously in the absence of contract to the contrary;

13. Provision is made for the court to stay a suit for enforcing a personal remedy against the mortgagor till the mortgagee has exhausted his remedies against the mortgaged property;

14. The principle of ~~ambs~~ subrogation is extended so that all persons who have an interest in the mortgaged property other than the mortgagor will be entitled to be substituted in the place of the creditor who is paid off;

15. The law of merger is modified so that the creditor may have the benefit of keeping alive against subsequent incumbrances, his own ~~incumbrances~~ incumbrance as well as those which he has paid off.

16. Leases are ~~to be~~ required to be executed by both parties.

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See

REPUBLICAN BILL.
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Statement of General Principles.

Consequent on the amendments proposed to the Transfer of Property Regulation, it has become necessary to introduce amendments to (1) the Specific Relief Act, (2) the Registration Regulation, (3) the Succession Act, (4) the Limitation Regulation and (5) the Code of Civil Procedure.

Amendments to the Specific Relief Act give effect to the principle of part performance embodied in the new section 53 A of the Transfer of Property Regulation.

The Registration Regulation is amended so that assignments of decrees, orders and awards, relating to immovable property may be always registered. Courts will be empowered to admit unregistered documents in evidence in giving effect to the doctrine of part performance.

The Succession Act is amended in conformity with the amendments to sections 15 to 18 of the Transfer of Property Regulation.

Amendment to the Limitation Regulation providing for a period of limitation governing suits to recover money due on a mortgage by the deposit of title deeds is included in the Bill to amend the Limitation Regulation.

The amendments to the Code of Civil Procedure relate to Order XXXIV of the First Schedule thereof and the forms in Appendix D. These may, in due course, be made by the High Court itself under its rule-making power, and they are not therefore included in the Bill.

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THE TRANSFER OF PROPERTY (Amendment)
SUPPLEMENTARY BILL.

STATEMENT OF GENERAL PRINCIPLES.

Consequent on the amendments proposed to the Transfer of Property Regulation, it has become necessary to introduce amendments to (1) ^{the} Specific Relief Act, (2) ^{the} Registration Regulation, (3) ^{the} Succession Act, (4) ^{the} Limitation Regulation and (5) ^{the} Code of Civil Procedure.

Amendments to the Specific Relief Act give effect to the principle of part performance embodied in the new section 53 A of the Transfer of Property Regulation.

The Registration Regulation is amended so that assignments of decrees, orders and awards relating to immovable property may be always registered. Courts will be empowered to admit ^{un}~~the~~/registered documents in evidence in giving effect to the doctrine of part performance.

The Succession Act is amended in conformity with the amendments to sections 15 to 18 of the Transfer of Property Regulation.

Amendment to the Limitation Regulation providing for a period of limitation governing suits to recover ~~the~~ money due on a mortgage by the deposit of title deeds is included in the Bill to amend the Limitation Regulation

The amendments to the Code of Civil Procedure relate to Order XXXIV of the First Schedule thereto and the forms in Appendix D. These may, in due course, be made by the High Court itself under their rule-making power, and they are not therefore included in the Bill.

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aside alienations made by the manager are provided for. Provision is also made for the case of suits by the manager himself attacking transfers made by a predecessor for valuable consideration and claiming to recover the property. It is proposed to take as the starting point the death, resignation or removal of the transferring manager and to adopt as the period of limitation twelve years, which is the normal period in similar cases.

(v) Reading Article 158 along with paragraph 10, second schedule, Civil Procedure Code it is desirable to make it definite that time will run from the day on which the parties receive notice that the award has been filed in court.

(vi) Application to set aside a sale in execution of a decree on the ground of fraud in publishing or conducting the sale is also included under Article 166.

(vii) The time now allowed for bringing the legal representative of a deceased party on record is six months. This is considered too long and it is proposed to reduce it to ninety days. This will help in reducing the delay in the disposal of suits. The reduction will not affect parties who are diligent. The apprehension that the change will prove a hardship to parties who find it difficult to ascertain the address of the legal representatives has not much force. What is required is that an application mentioning the legal representative should be filed in court. Delay in the service of summons owing to difficulty in ascertaining the address is sufficiently protected under the Civil Procedure Code.

IV. Statement of General Principles of the Bill to amend the transfer of Property Regulation.

The Transfer of Property Regulation in Mysore was passed in 1918 on the lines of the British Indian Act of 1882 and all amendments passed in British India up to 1918 were taken into consideration. The British Indian Act has subsequently been amended, more particularly by Act XX of 1929 which made substantial changes in many sections and set at rest points on which there had been conflicting decisions. It is considered desirable to adopt these amendments as it is also convenient to have a law in this respect on the same lines as in British India with suitable variations dictated by local conditions. A Bill has accordingly been drafted.

In the Bill it has been sought to remedy only defects which have led to inconvenience or anomalous results and to incorporate new principles of importance which have been judicially recognised.

Special attention is drawn to the following principles included in the Bill :—

1. Provision is made so that registration will amount to notice of the document registered.

2. Constructive notice to an agent of a fact material to the course of business in which the agent is engaged will be notice of that fact to the principal. The agent must not have fraudulently concealed the fact from his principal.

3. The validity of transfers in favour of a class of persons when some members of that class are unable to take possession, is recognised so that they may ensure to the benefit of those members of the class who are capable of taking possession.

4. The doctrine of part performance is recognised. At the same time provision is made for the purpose of securing that the law of registration is not evaded.

5. In a mortgage by conditional sale, the condition must be embodied in the mortgage deed ;

6. Provision is made to require a mortgagee to transfer, when so required, the mortgage debt to a third person named by the mortgagor ;

7. It is made clear that the mortgagor has a right to inspect and take copies of the documents of title relating to the mortgaged property which are in the possession of the mortgagee ;

8. It is also made clear that the mortgagor has the option to redeem several mortgages to the same mortgagee separately or simultaneously as he may think fit ;

9. There is no express provision in the Regulation allowing a mortgagee to make necessary improvements to the mortgaged property. This is now provided for ;

10. Statutory recognition is given to the mortgagor's power to lease in such a way as to bind the mortgagee subject to certain safeguards;

11. The remedy of foreclosure is abolished in the case of all mortgages except mortgages by conditional sale or anomalous mortgages providing expressly for foreclosure;

12. The mortgagee is obliged to enforce several mortgages by the same mortgagor simultaneously in the absence of contract to the contrary;

13. Provision is made for the Court to stay a suit for enforcing a personal remedy against the mortgagor till the mortgagee has exhausted his remedies against the mortgaged property;

14. The principle of subrogation is extended so that all persons who have an interest in the mortgaged property other than the mortgagor will be entitled to be substituted in the place of the creditor who is paid off;

15. The law of merger is modified so that the creditor may have the benefit of keeping alive against subsequent incumbrances, his own incumbrance as well as those which he has paid off;

16. Leases are to be required to be executed by both parties.

V. The Transfer of Property (Amendment) Supplementary Bill.

STATEMENT OF GENERAL PRINCIPLES.

Consequent on the amendments proposed to the Transfer of Property Regulation, it has become necessary to introduce amendments to (1) the Specific Relief Act, (2) the Registration Regulation, (3) the Succession Act, (4) the Limitation Regulation and (5) the Code of Civil Procedure.

Amendments to the Specific Relief Act give effect to the principle of part performance embodied in the new section 53 A of the Transfer of Property Regulation.

The Registration Regulation is amended so that assignments of decrees, orders and awards, relating to immovable property may be always registered. Courts will be empowered to admit unregistered documents in evidence in giving effect to the doctrine of part performance.

The Succession Act is amended in conformity with the amendments to sections 15 to 18 of the Transfer of Property Regulation.

Amendment to the Limitation Regulation providing for a period of limitation governing suits to recover money due on a mortgage by the deposit of title deeds is included in the Bill to amend the Limitation Regulation.

The amendments to the Code of Civil Procedure relate to Order XXXIV of the First Schedule thereto and the forms in Appendix D. These may, in due course, be made by the High Court itself under its rule-making power, and they are not therefore included in the Bill.

BANGALORE, }
2nd October 1937. }

A. SUNDARARAJA RAO,
Secretary,
Mysore Representative Assembly.

THE MYSORE REPRESENTATIVE ASSEMBLY.

DASARA SESSION—OCTOBER 1937.

STATEMENT OF GOVERNMENT BUSINESS TO BE PLACED BEFORE THE REPRESENTATIVE ASSEMBLY.

I. Statement of General Principles of the Bill to amend the Code of Civil Procedure.

One of the recommendations of the Royal Commission on Labour in India was that the wages and salaries of workmen receiving less than Rs. 300 per month should be entirely exempt from attachment. The Government of India, in consultation with the Local Governments, have come to the conclusion that Rs. 100 is a more suitable limit than Rs. 300 and that the benefit of this recommendation should be given not only to workmen but also to public officers and servants of Local Bodies and Railways. Section 60 of the Code of Civil Procedure relating to attachment of salary in British India has been suitably amended by Act IX of 1937 to give effect to this recommendation. It is now proposed to take action on similar lines in Mysore.

At present in Mysore, the salary wholly exempt from attachment is Rs. 20 and where the salary is Rs. 40, Rs. 20 is exempt and a moiety of it in other cases. A committee appointed some time back to examine the question of indebtedness of officials in Mysore, recommended that in respect of attachment of salary by Civil Courts, the exemption limit may be raised from Rs. 20 to Rs. 50. Having regard to the conditions prevailing in Mysore it is considered that salary up to and inclusive of Rs. 50 and also one-half of the remainder of such salary should be exempt from attachment. The Bill is intended to give effect to these proposals.

II. Statement of General Principles of the Bill to amend the Mysore Village Panchayet Regulation.

Before the introduction of the Village Panchayet Regulation, the Revenue Officers were assessing and collecting the Mohatarfa taxes and crediting them to the funds of the District Boards. With the introduction of the Village Panchayet Regulation from 1st February 1927, these taxes were replaced by Panchayet taxes and the duty of assessing and collecting them devolved on the Panchayets. Although under the Regulation, Village Panchayets are invested with sufficient powers to assess and collect the taxes, experience has shown that the Panchayet Chairmen are generally negligent or unwilling to shoulder the unpopular duty of collection, and even in fixing the assessment, they have not been exercising sufficient discretion. In some Village Panchayets no action has been taken even to prepare the assessment lists.

Since the year 1930, Government have passed several orders enabling the Village Panchayets to collect the arrears of taxes by entrusting the work to village officers and by authorising the Deputy Commissioners to employ Special Revenue Inspectors for the purpose. But these measures too have led to no material improvement. The arrears of Village Panchayet taxes have gone on increasing from year to year until at the end of 1935-36, they amounted to Rs. 43,12,205 on account of obligatory taxes alone. Government consider that in order to ensure prompt collection of Village Panchayet taxes and thereby provide sufficient funds for undertaking works of permanent utility, the old system under which the revenue officers were entirely responsible for the assessment and collection of the Mohatarfa taxes, should be revived.

The question was referred to the Standing Committee for Local Self-Government and the Departments of Medicine and Health at their meeting held on 1st

May 1937, and it was their general opinion that the amendment of the Regulation in the manner proposed is very necessary in the interests of Panchayet Administration in the State. It was also represented at the last session of the Representative Assembly in June 1937 that it would be desirable to revert to the old system of collection.

The proposed amendment is intended to give effect to this change of system. According to the revised procedure, the Amildar will be responsible for assessing the rates of obligatory taxes to be levied and for the preparation of the assessment list in respect of each Panchayet in the Taluk. The Panchayets, however, will continue to have the power of levying optional taxes, but the collection of these taxes also will be entrusted to the Amildar. The period of limitation for the recovery of the Village Panchayet dues is also intended to be enhanced from three to six years.

III. Statement of General Principles of the Bill to amend the mitation Regulation.

In the judgment of the High Court in *Motiram Lala vs. Deputy Commissioner and Muzrai Officer, Mysore District* (40 Mys. H. C. R. 330), it was suggested that Section 29 of the Limitation Regulation might be amended as in British India so as to make most of the exceptions and qualifications to Section 3 of the Limitation Regulation apply, not only to the periods of limitation prescribed by that Regulation, but to periods of limitation prescribed by other Regulations. Before the amendment in British India in 1922, Section 29 was the same as here. It provided that nothing in the Limitation Act should affect or alter any period of Limitation specially prescribed for any suit, appeal or application by any special or local law. The interpretation of this provision was the subject of conflicting decisions by High Courts, some holding that the application of the general provisions of the Limitation Act would be to affect the period of limitation prescribed under the special law and others holding a contrary view. To remove this conflict, Section 29 of the British Indian Act was amended by Act X of 1922. As suggested by the High Court in the judgment cited above, it is proposed to amend Section 29 of the Mysore Regulation as in British India. While amending Section 29 opportunity is taken, so far as is suitable, to bring the Mysore Regulation into line with the Act in British India, which has undergone some substantial changes by amending Acts in 1919, 1920, 1922 and 1929.

The principles of the most important of such amendments are indicated below:—

(i) Recent decisions have taken the view that whenever property is conveyed to a religious or charitable institution, it is not held by the manager thereof as trustee. He holds it only as manager, and the property does not vest in him in trust, with the result that suits against him in respect of the property of endowments of this nature are not governed by Section 10 of the Limitation Regulation. Section 10 is therefore amended so as to put property of Hindu and Mahomedan religious endowments in respect of the law of limitation on the same footing as other trust property which definitely vests in a trustee.

(ii) The provisions of Article 133 relating to movable property are enacted as Article 48A with the period of limitation curtailed to three years. Specific provision is made for the case of a suit to set aside a sale of movable property comprised in a religious or charitable endowment where the plaintiff is merely interested in the endowment as a beneficiary, but is not entitled to possession. The date when the plaintiff obtains knowledge of the sale he seeks to attack, is the most suitable date from which limitation should run. If limitation runs from the date of purchase or even from the date of delivery of possession, a dishonest trustee and a collusive transferee might conceal the fact until the period of limitation expired. With this change it is considered that a period of three years in the case of movable property is quite sufficient.

(iii) As it is not definite what period of limitation should govern a suit to recover money due on a mortgage by the deposit of title deeds, provision is now made therefor by fixing a period of 12 years in such cases.

(iv) It is proposed to bring religious and charitable endowments within the scope of Articles 133 and 134. Suits by persons interested in an endowment to set

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"Please substitute the word 'Act' for the word 'Regulation' wherever it occurs in this."

NOTIFICATION.

No. 2825—L. C., Bangalore, dated 9th December 1937.

Under Rule 8 of the rules for the conduct of business of the Mysore Legislative Council, the accompanying Bill to amend the Transfer of Property Regulation for certain purposes is published for general information with the statement of objects and reasons.

act

By Order,
A. SUNDARARAJA RAO,
Secretary,
Mysore Legislative Council

Bill to amend the transfer of property regulation for certain purposes.

Whereas it is expedient to amend the Transfer of Property Regulation, 1918, for the purposes hereinafter appearing; it is hereby enacted as follows:—

Short title and
commence-
ment.

1. (1) This Regulation may be called the Transfer of Property (Amendment) Regulation, 193

act

(2) It shall come into force on the first day of

Amendment
of section 8.

2. In section 3 of the Transfer of Property Regulation (hereinafter referred to as the said Regulation), for the last paragraph containing the definition of "notice," the following shall be substituted, namely:—

"a person is said to have notice" of a fact when he actually knows that fact, or when, but for wilful abstention from an inquiry or search which he ought to have made, or gross negligence, he would have known it.

Explanation I.—Where any transaction relating to immovable property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part of or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration or, if the instrument has been registered under sub-section (2) of section 30 of the Mysore Registration Regulation, 1903, from the earliest date on which a memorandum thereof has been filed by any Sub-Registrar under section 66 of that Regulation:

Provided that—

(1) the instrument has been registered and its registration completed in the manner prescribed by the Mysore Registration Regulation, 1903, and the rules made thereunder,

(2) the instrument has been duly entered or noted, as the case may be, in the books kept under section 51 of that Regulation, and

(3) the particulars regarding the transaction to which the instrument relates have been correctly entered in the indexes kept under section 55 of that Regulation.

Explanation II.—Any person acquiring any immovable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof.

Explanation III.—A person shall be deemed to have had notice of any fact if his agent acquires notice thereof whilst acting on his behalf in the course of business to which that fact is material:

Provided that, if the agent fraudulently conceals the fact, the principal shall not be charged with notice

act
act

act

act

act

act

thereof as against any person who was a party to or otherwise cognizant of the fraud."

3. In section 5 of the said Regulation, after the words "*or to himself*" the words "*or to himself*" shall be inserted; and to the same section the following paragraph shall be added, namely:

Amendment
of section 5.

"In this section 'living person' includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals."

4. In section 6 of the said Regulation, after clause (d) the following clause shall be inserted, namely:—

Amendment
of section 6.

"(dd) A right to future maintenance, in whatsoever manner arising, secured or determined, cannot be transferred."

5. For the second paragraph of section 11 of the said Regulation beginning with the words "nothing in this section" and ending with the words "in a particular manner" the following shall be substituted, namely:—

Amendment
of section 11.

"Where any such direction has been made in respect of one piece of immovable property for the purpose of securing the beneficial enjoyment of another piece of such property, nothing in this section shall be deemed to affect any right which the transferor may have to enforce such direction or any remedy which he may have in respect of a breach thereof."

6. In section 15 of the said Regulation, for the words "as regards the whole class," the following words shall be substituted, namely:—

Amendment
of section 15.

"in regard to those persons only and not in regard to the whole class."

7. For sections 16, 17 and 18 of the said Regulation, the following sections shall be substituted, namely:—

Substitution
of new
sections for
sections 16, 17
and 18.

"16. Where by reason of any of the rules contained in sections 13 and 14, an interest created for the benefit of a person or of a class of persons fails in regard to such person or the whole of such class, any interest created in the same transaction and intended to take effect after or upon failure of such prior interest also fails.

Transfer to
take effect on
failure of prior
interest.

Direction for
accumulation.

“17. (1) Where the terms of a transfer of property direct that the income arising from the property shall be accumulated either wholly or in part during a period longer than—

- (a) the life of the transferor, or
- (b) a period of eighteen years from the date of the transfer,

such direction shall, save as hereinafter provided, be void to the extent to which the period during which the accumulation is directed exceeds the longer of the aforesaid periods, and at the end of such last-mentioned period the property and the income thereof shall be disposed of as if the period during which the accumulation has been directed to be made had elapsed.

(2) This section shall not affect any direction for accumulation for the purpose of—

- (i) the payment of the debts of the transferor or any other person taking any interest under the transfer, or
- (ii) the provision of portions for children or remote issue of the transferor or of any other person taking any interest under the transfer, or
- (iii) the preservation or maintenance of the property transferred;

and such direction may be made accordingly.

Transfer in
perpetuity for
benefit of
public.

“18. The restrictions in sections 14, 16 and 17 shall not apply in the case of a transfer of property for the benefit of the public in the advancement of religion, knowledge, commerce, health, safety, or any other object beneficial to mankind.”

Amendment
of section 39.

8. In section 39 of the said Regulation—

(a) the words “with the intention of defeating such right” shall be omitted, and for the words “of such intention” the word “thereof” shall be substituted; and

(b) the *illustration* shall be omitted.

Amendment
of section 40.

9. In section 40 of the said Regulation for the words “of the latter property or to compel its enjoyment in a particular manner,” the words “in a particular manner of the latter property” shall be substituted.

10. In section 43 of the said Regulation, after the word "person" the words "fraudulently or" shall be inserted. Amendment
of section 43.

11. (1) In section 52 of the said Regulation— Amendment
of section 52.

- (a) for the words "active prosecution" the word "pendency" shall be substituted;
- (b) for the words "a contentious" the word "any" shall be substituted; and
- (c) after the words "suit or proceeding," where they occur for the first time, the words "which is not collusive and" shall be inserted.

(2) To the same section the following *Explanation* shall be added, namely :—

"*Explanation.*—For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force."

12. For section 53 of the said Regulation, the following section shall be substituted, namely :— Substitution
of new section
for section 53.

"53. (1) Every transfer of immovable property made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed. Fraudulent
transfer.

Nothing in this sub-section shall impair the rights of a transferee in good faith and for consideration.

Nothing in this sub-section shall affect any law for the time being in force relating to insolvency.

A suit instituted by a creditor (which term includes a decree-holder whether he has or has not applied for execution of his decree) to avoid a transfer on the ground that it has been made with intent to defeat or delay the creditors of the transferor, shall be instituted on behalf of, or for the benefit of, all the creditors.

(2) Every transfer of immovable property made without consideration with intent to defraud a subsequent transferee shall be voidable at the option of such transferee.

For the purposes of this sub-section, no transfer made without consideration shall be deemed to have been made with intent to defraud by reason only that a subsequent transfer for consideration was made."

13. After section 53 of the said Regulation, the following section shall be inserted, namely:—

Insertion of
new section
53-A.
Part
Performance.

"53-A. Where any person contracts to transfer for consideration any immovable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty,

and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee being already in possession continues in possession in part performance of the contract and has done some act in furtherance of the contract,

and the transferee has performed or is willing to perform his part of the contract,

then, notwithstanding that the contract, though required to be registered, has not been registered, or where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract;

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof."

Amendment
of section 55.

14. In section 55 of the said Regulation—

(a) in sub-clause (a) of clause (1), after the word "property" the words "or in the seller's title thereto" shall be inserted;

(b) in sub-clause (b) of clause (4), after the word "buyer," where it occurs for the second time, the word "any transferee without consideration or any transferee with notice of the non-payment," shall be inserted; and after the words "on such amount or part" the word "from the date on which possession has been delivered" shall be added; and

(c) in sub-clause (b) of clause (6), the words "with notice of the payment" shall be omitted.

15. For section 56 of the said Regulation, the following shall be substituted, namely:—

"56. If the owner of two or more properties mortgages them to one person and then sells one or more of the properties to another person, the buyer is, in the absence of a contract to the contrary, entitled to have the mortgage-debt satisfied out of the property or properties not sold to him, so far as the same will extend, but not so far as to prejudice the rights of the mortgagee or persons claiming under him or of any other person who has for consideration acquired an interest in any of the properties."

16. In section 58 of the said Regulation, (a) to clause (c) the following proviso shall be added, namely:—

"Provided that no such transaction shall be deemed to be a mortgage, unless the condition is embodied in the document which effects or purports to effect the sale;"

(b) in clause (d)—

- (i) after the words "Where the mortgagor delivers possession" the words "or expressly or by implication binds himself to deliver possession" shall be inserted;
- (ii) for the words "and to appropriate them" the words "or any part of such rents and profits and to appropriate the same" shall be substituted; and
- (iii) after the words "or partly in lieu of interest," for the word "and" the word "or" shall be substituted; and

(c) after clause (e) the following clauses shall be added, namely:—

"(f) The transaction is called a mortgage by deposit of title deeds where a person, in any area to which this provision may be extended by the Government by notification in the Official Gazette, delivers to a Bank or its authorized agent documents of title relating to immovable property with intent to create a security thereon and accompanied by a memorandum in writing signed by the debtor specifying such property and the amount of credit given or agreed to be given by the Bank on the security

act
Substitution
of new section
for section 56.

Marshalling
by subsequent
purchaser.

act
Amendment
of section 58.

of such property, provided that a copy of such memorandum under the seal of the Bank and the signature of its authorised agent is delivered or transmitted by registered post within ten days of the delivery to the bank as aforesaid of the memorandum, to every registering officer within whose district or sub-district the whole or any portion of such property is situated, or where a special registering officer is appointed or designated by Government in this behalf, to such registering officer and such registering officer shall thereupon file the copy in his Book No. 1.

Explanation.—"Bank" in this clause means an association or company with limited liability formed principally for the purpose of engaging on the business of banking and registered under the provisions of the law relating to companies for the time being in force in Mysore or in British India or in any other Indian State which may be notified by the Government in the Official Gazette in this behalf.

(g) A mortgage which is not a simple mortgage, a mortgage by conditional sale, an usufructuary mortgage, an English mortgage or a mortgage by deposit of title-deeds within the meaning of this section is called an anomalous mortgage."

a
Amendment
of section 59.

17. In section 59 of the said Regulation—

(a) after the words "a mortgage" the words "other than a mortgage by deposit of title deeds" shall be inserted and

(b) the second paragraph and the *Explanation* shall be omitted.

0
Insertion of
new section
59-A.

18. After section 59 of the said Regulation, the following section shall be inserted, namely:—

References to
mortgagors
and mort-
gagees to
include per-
sons deriving
title from
them.

"59-A. Unless otherwise expressly provided, reference in this Chapter to mortgagors and mortgagees shall be deemed to include references to persons deriving title from them respectively."

Amendment
of section 60.

19. In section 60 of the said Regulation,

(a) for the word "payable" the word "due" shall be substituted;

(b) for the words "the mortgage-deed, it any, to the mortgagor" the following words shall be substituted, namely:—

"to the mortgagor the mortgage-deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee;"

(c) for the word "order" the word "decree" shall be substituted; and

(d) after the words "remaining due on the mortgage, except" the word "only" shall be inserted.

20. After section 60 of the said Regulation, the following sections shall be inserted, namely:—

"60-A. (1) Where a mortgagor is entitled to redemption, then, on the fulfilment of any conditions on the fulfilment of which he would be entitled to require a re-transfer, he may require the mortgagee, instead of re-transferring the property, to assign the mortgage-debt and transfer the mortgaged property to such third person as the mortgagor may direct; and the mortgagee shall be bound to assign and transfer accordingly.

Insertion of new sections 60-A and 60-B.

Obligation to transfer to third party instead of re-transference to mortgagor.

(2) The rights conferred by this section belong to and may be enforced by the mortgagor or by any encumbrancer notwithstanding an intermediate encumbrance, but the requisition of any encumbrancer shall prevail over a requisition of the mortgagor and, as between encumbrancers the requisition of a prior encumbrancer shall prevail over that of a subsequent encumbrancer.

(3) The provisions of this section do not apply in the case of a mortgagee who is or has been in possession.

60-B. A mortgagor, as long as his right of redemption subsists, shall be entitled at all reasonable times, at his request and at his own cost and on payment of the mortgagee's costs and expenses in this behalf, to inspect and make copies or abstracts of, or extracts from, documents of title relating to the mortgaged property which are in the custody or power of the mortgagee."

Right to inspection and production of documents.

21. For section 61 of the said Regulation the following section shall be substituted, namely:—

"61. A mortgagor who has executed two or more mortgages in favour of the same mortgagee shall, in the absence of a contract to the contrary when the principal money of any two or more of the mortgages has become due, be entitled to redeem any one such mortgage

Substitution of new section for section 61.

Right to redeem separately or simultaneously.

separately, or any two or more of such mortgages together."

Amendment
of section 62.

22. In section 62 of the said Regulation—

(a) after the word "property," where it first occurs, the words "together with the mortgage deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee" shall be inserted;

(b) for the words "the interest of the principal money" the words "or any part thereof a part only of the mortgage money," shall be substituted; and

(c) for the words "the principal money," where they occur for the second time, the words "the mortgage-money or the balance thereof" shall be substituted.

Amendment
of section 63.

23. In section 63 of the said Regulation, for the words "at the same rate of interest" the words "with interest at the same rate as is payable on the principal, or where no such rate is fixed, at the rate of nine per cent per annum" shall be substituted.

Insertion of
new section
63-A.

Improve-
ments to
mortgaged
property.

24. After section 63 of the said Regulation, the following section shall be inserted, namely:—

"63-A. (1) Where mortgaged property in possession of the mortgagee has, during the continuance of the mortgage, been improved, the mortgagor, upon redemption, shall, in the absence of a contract to the contrary, be entitled to the improvement; and the mortgagor shall not, save only in cases provided for in sub-section (2), be liable to pay the cost thereof.

(2) Where any such improvement was effected at the cost of the mortgagee and was necessary to preserve the property from destruction or deterioration or was necessary to prevent the security from becoming insufficient, or was made in compliance with the lawful order of any public servant or public authority, the mortgagor shall, in the absence of a contract to the contrary, be liable to pay the proper cost thereof as an addition to the principal money with interest at the same rate as is payable on the principal, or where no such rate is fixed, at the rate of nine per cent per annum, and the profits, if any, accruing by reason of the improvement shall be credited to the mortgagor.

(3) Notwithstanding anything in sub-section (1) a mortgagee may remove at any time whilst he is in possession of the property mortgaged, but not afterwards, all

things which he has attached to the earth, provided he leaves the property in the state in which he received it."

25. In section 64 of the said Regulation, the words "for a term of years" shall be omitted. Amendment of section 64.

26. In section 65 of the said Regulation—
(a) in clause (d), the words "for a term of years" shall be omitted; and Amendment of section 65.

(b) the words "Nothing in clause (c), or in clause (d), so far as it relates to the payment of future rent, applies in the case of an usufructuary mortgage" shall be omitted.

27. After section 65 of the said Regulation, the following section shall be inserted, namely:— Insertion of new section 65 A.

65-A. (1) Subject to the provisions of sub-section (2) a mortgagor, while lawfully in possession of the mortgaged property, shall have power to make leases thereof which shall be binding on the mortgagee. Mortgagor's power to lease.

(2) (a) Every such lease shall be such as would be made in the ordinary course of management of the property concerned, and in accordance with any local law, custom or usage.

(b) Every such lease shall reserve the best rent that can reasonably be obtained, and no premium shall be paid or promised and no rent shall be payable in advance.

(c) No such lease shall contain a covenant for renewal.

(d) Every such lease shall take effect from a date not later than six months from the date on which it is made.

(e) In the case of a lease of buildings, whether leased with or without the land on which they stand, the duration of the lease shall in no case exceed three years and the lease shall contain a covenant for payment of the rent and a condition of re-entry on the rent not being paid within a time therein specified.

(3) The provisions of sub-section (1) apply only if and as far as a contrary intention is not expressed in the mortgage-deed; and the provisions of sub-section (2) may be varied or extended by the mortgage-deed, and as so varied and extended, shall, as far as may be, operate in like manner and with all like incidents, effects and consequences, as if such variations or extensions were contained in that sub-section."

Act

Amendment
of section 67.

28. In section 67 of the said Regulation,—

(a) for the word “payable” the word “due” shall be substituted;

(b) for the words “an order,” wherever they occur, the words “a decree” shall be substituted; and

(c) for clause (a) the following clause shall be substituted, namely:—

official
changes only.
has decided to
substitute.

e/

“(a) to authorize any mortgagee, other than a mortgagee by conditional sale or a mortgagee under an anomalous mortgage by the terms of which he is entitled to foreclose, to institute a suit for foreclosure, or an usufructuary mortgagee as such, where he is authorized to appropriate the rents and profits or any part of such grants and profits in payment of the principal money or partly in lieu of interest or partly in payment of the principal money, or a mortgagee by conditional sale as such to institute a suit for sale; or.”

Insertion of
new section
67A.

Mortgagee
when bound
to bring one
suit on several
mortgages.

29. After section 67 of the said Regulation, the following section shall be inserted, namely:—

“67A. A mortgagee who holds two or more mortgages executed by the same mortgagor in respect of each of which he has a right to obtain the same kind of decree under section 67, and who sues to obtain such decree on any one of the mortgages, shall, in the absence of a contract to the contrary, be bound to sue on all the mortgages in respect of which the mortgage-money has become due.”

C.G.X

Substitution
of new section
for section 68.

Right to sue
for mortgage

30. For section 68 of the said Regulation, the following section shall be substituted, namely:—

“68. (1) The mortgagee has a right to sue for the mortgage money in the following cases and no others, namely:—

(a) where the mortgagor binds himself to repay the same;

(b) where, by any cause other than the wrongful act or default of the mortgagor or mortgagee, the mortgaged property is wholly or partially destroyed or the security is rendered insufficient within the meaning of section 66, and the mortgagee has given the mortgagor a reasonable opportunity of providing further security enough to render the whole security sufficient, and the mortgagor has failed to do so;

- (c) where the mortgagee is deprived of the whole or part of his security by or in consequence of the wrongful act or default of the mortgagor ;
- (d) where, the mortgagee being entitled to possession of the mortgaged property, the mortgagor fails to deliver the same to him, or to secure the possession thereof to him without disturbance by the mortgagor or any person claiming under a title superior to that of the mortgagor ;

Provided that, in the case referred to in clause (a), a transferee from the mortgagor or from his legal representative shall not be liable to be sued for the mortgage-money.

(2) Where a suit is brought under clause (a) or clause (b) of sub-section (1), the Court may, at its discretion, stay the suit and all proceedings therein, notwithstanding any contract to the contrary, until the mortgagee has exhausted all his available remedies against the mortgaged property or what remains of it, unless the mortgagee abandons his security and, if necessary, re-transfers the mortgaged property."

31. In section 71 of the said Regulation, the words "for a term of years" shall be omitted. Amendment of section 71. Act

32. In section 72 of the said Regulation:— Amendment of section 72. Act

- (a) for the words "When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property, he" the words "A mortgagee" shall be substituted.
- (b) clause (a) shall be omitted ;
- (c) in clause (b), for the words "its preservation" the words "the preservation of the mortgaged property" shall be substituted ;
- (d) after the words "nine per cent per annum," the following Proviso shall be inserted, namely :—

"Provided that the expenditure of money by the mortgagee under clause (b) or clause (c) shall not be deemed to be necessary unless the mortgagor has been called upon and has failed to take proper and timely steps to preserve the property or to support the title." and

- (e) for the words "a charge on the mortgaged property, in addition to the principal money, with the same priority and with interest at the

same rate " the following shall be substituted, namely:—

"added to the principal money with interest at the same rate as is payable on the principal money, or, where no such rate is fixed, at the rate of nine per cent, per annum."

Substitution
of new section
for section 73.

33. For section 73 of the said Regulation, the following section shall be substituted, namely:—

"73. (1) Where the mortgaged property or any part thereof or any interest therein is sold owing to failure to pay arrears of revenue or other charges of a public nature or rent due in respect of such property, and such failure did not arise from any default of the mortgagee, the mortgagee shall be entitled to claim payment of the mortgage-money, in whole or in part, out of any surplus of the sale proceeds remaining after payment of the arrears and of all charges and deductions directed by law.

(2) Where the mortgaged property or any part thereof or any interest therein is acquired under the Land Acquisition Regulation, 1894, or any other enactment for the time being in force providing for the compulsory acquisition of immovable property, the mortgagee shall be entitled to claim payment of the mortgage-money, in whole or in part, out of the amount due to the mortgagor as compensation,

(3) Such claims shall prevail against all other claims except those of prior encumbrances, and may be enforced notwithstanding that the principal money on the mortgage has not become due."

Omission of
sections 74
and 75.

Amendment
of section 76.

34. Section 74 and section 75 of the said Regulation shall be omitted.

35. In section 76 of the said Regulation:—

(a) in clause (c), after the words "charges of a public nature" the words "and all rent" shall be inserted;

(b) in clause (h), after the words "deducting the expenses" the words "properly incurred for the management of the property and the collection of rents and profits and the other expenses" shall be inserted, and the words "on the principal-money" shall be omitted; and

(c) in clause (i), the word "gross" shall be omitted.

36. Section 80 of the said Regulation shall be omitted. Omission of section 80.

37. For sub-section (i) of section 81 of the said Regulation, the following section shall be substituted, namely:— Substitution of new section for section 81. Act

“81. (1) If the owner of two or more properties mortgages them to one person and then mortgages one or more of the properties to another person, the subsequent mortgagee is, in the absence of a contract to the contrary, entitled to have the prior mortgage-debt satisfied out of the property or properties not mortgaged to him, so far as the same will extend, but not so as to prejudice the rights of the prior mortgagee or of any other person who has for consideration acquired an interest in any of the properties.” Act

38. In section 82 of the said Regulation:—

(a) for the first paragraph beginning with the words “Where several properties,” and ending with the words “date of the mortgage” the following shall be substituted, namely:—

“Where property subject to a mortgage belongs to two or more persons having distinct and separate rights of ownership therein, the different shares in or parts of such property owned by such persons are, in the absence of a contract to the contrary, liable to contribute rateably to the debt secured by the mortgage, and, for the purpose of determining the rate at which each such share or part shall contribute, the value thereof shall be deemed to be its value at the date of the mortgage after deduction of the amount of any other mortgage or charge to which it may have been subject on that date” and

(b) in the third paragraph, for the word “second” the word “subsequent” shall be substituted.

39. In section 83 of the said Regulation:—

(a) for the words “has become payable” the words “payable in respect of any mortgage has become due” shall be substituted;

(b) for the words “if then in his possession or power” the words “and all documents in his possession or power relating to the mortgaged property” shall be substituted;

(c) after the word “mortgage-deed,” where it occurs for the second time, the words “and all such other documents” shall be inserted; and

Amendment of section 83.

- (d) the following paragraph shall be added after the words "such other person as aforesaid," namely:—

"Where the mortgagee is in possession of the mortgaged property, the Court shall, before paying to him the amount so deposited, direct him to deliver possession hereof to the mortgagor and at the cost of the mortgagor either to retransfer the mortgaged property to the mortgagor or to such third person as the mortgagor may direct or to execute and (where the mortgage has been effected by a registered instrument) have registered an acknowledgment in writing that any right in derogation of the mortgagor's interest transferred to the mortgagee has been extinguished."

Amendment
of section 84.

40. In section 84 of the said Regulation:—

- (a) after the words "from the date of the tender or" the words "in a case of a deposit, where no previous tender of such amount has been made," shall be inserted;
- (b) for the words "as the case may be" the following shall be substituted, namely:—

"and the notice required by section 83 has been served on the mortgagee:

"Provided that, where the mortgagor has deposited such amount without having made a previous tender thereof and has subsequently withdrawn the same or any part thereof interest on the principal money shall be payable from the date of such withdrawal;" and

- (c) after the words "tender of the mortgage-money" the words "and such notice has not been given before the making of the tender or deposit, as the case may be" shall be added.

Substitution
of new section
for section 91.

Persons who
may sue for
redemption.

41. For section 91 of the said Regulation the following section shall be substituted, namely:—

"91. Besides the mortgagor, any of the following persons may redeem, or institute a suit for redemption of, the mortgaged property, namely:—

- (a) any person (other than the mortgagee of the interest sought to be redeemed) who has any interest in, or charge upon, the property mortgaged or in or upon the right to redeem the same;

- (b) any surety for the payment of the mortgage-debt or any part thereof; or
- (c) any creditor of the mortgagor who has in a suit for the administration of his estate obtained a decree for sale of the mortgaged property."

42. After section 91 of the said Regulation, the following sections shall be inserted, namely:—

Insertion of new sections 92, 93 and 94.

"92. Any of the persons referred to in section 91 (other than the mortgagor) and any co-mortgagor shall, on redeeming property subject to the mortgage, have, so far as regards redemption, foreclosure or sale of such property, the same rights as the mortgagee whose mortgage he redeems may have against the mortgagor or any other mortgagee.

Subrogation.

The right conferred by this section is called the right of subrogation, and a person acquiring the same is said to be subrogated to the rights of the mortgagee whose mortgage he redeems.

A person who has advanced to a mortgagor money with which the mortgage has been redeemed shall be subrogated to the rights of the mortgagee whose mortgage has been redeemed, if the mortgagor has by a registered instrument agreed that such persons shall be so subrogated.

Nothing in this section shall be deemed to confer a right of subrogation on any person unless the mortgage in respect of which the right is claimed has been redeemed in full.

93. No mortgagee paying off a prior mortgage, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his original security; and except in the case provided for by section 79, no mortgagee making a subsequent advance to the mortgagor, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his security for such subsequent advance.

Prohibition of tacking.

94. Where a property is mortgaged for successive debts to successive mortgagees, a mesne mortgagee has the same rights against mortgagees posterior to himself as he has against the mortgagor."

Rights of mesne mortgagee.

43. For section 95 of the said Regulation the following sections shall be substituted, namely:—

Substitution of new sections for section 95.

Right of
redeeming
co-mortgagor
to expenses.

"95. Where one of several mortgagors redeems the mortgaged property, he shall, in enforcing his right of subrogation under section 92 against his co-mortgagors, be entitled to add to the mortgage-money recoverable from them such proportion of the expenses properly incurred in such redemption as is attributable to their share in the property.

Mortgage by
deposit of
title-deeds.

96. The provisions hereinbefore contained which apply to a simple mortgage shall, so far as may be, apply to a mortgage by deposit of title-deeds."

Amendment
of section 98.

44. In section 98 of the said Regulation, for the words "a mortgage not being a simple mortgage, a mortgage by conditional sale, an usufructuary mortgage or an English mortgage or a combination of the first and third, or the second and third, of such forms," the words "an anomalous mortgage" shall be substituted.

Amendment
of section 100.

45. In section 100 of the said Regulation,

(a) for the words "as to a mortgagor shall, so far as may be, apply to the owner of such property, and the provisions of sections 81 and 82 shall, so far as may be, apply to the person having such charge" the words "which apply to a simple mortgage shall, so far as may be, apply to such charge," shall be substituted; and

(b) after the words "in the execution of his trust" the following words shall be added, namely:—

"and save as otherwise expressly provided by any law for the time being in force, no charge shall be enforced against any property in the hands of a person to whom such property has been transferred for consideration and without notice of the charge."

Substitution
of new section
for section
101.

46. For section 101 of the said Regulation, the following section shall be substituted, namely:—

No merger in
case of subse-
quent encum-
brance.

"101. Any mortgagee of, or person having a charge upon immovable property, or any transferee from such mortgagee or charge-holder, may purchase or otherwise acquire the rights in the property of the mortgagor or owner, as the case may be, without thereby causing the mortgage or charge to be merged as between himself and any subsequent mortgagee of, or person having a subsequent charge upon, the same property; and no such subsequent mortgagee or charge-holder shall be entitled to foreclose or sell such property without redeeming the

prior mortgage or charge, or otherwise than subject thereto."

47. In section 102 of the said Regulation,

Amendment
of section 102

(a) for the words "Where the person or agent on whom such notice should be served cannot be found in the said district, or is unknown" the words "Where no person or agent on whom such notice should be served can be found or is known," shall be substituted;

(b) after the words "and any notice served in compliance with such direction shall be deemed sufficient" the following proviso shall be inserted, namely:—

"Provided that, in the case of a notice required by section 83, in the case of a deposit, the application shall be made to the court in which the deposit has been made."

(c) for the words "Where the person or agent to whom such tender should be made cannot be found within the said district, or is unknown" the words "Where no person or agent to whom such tender should be made can be found or is known," shall be substituted; and

(d) for the words "in such Court as last aforesaid" the words "in any Court in which a suit might be brought for redemption of the mortgaged property" shall be substituted.

48. In section 106 of the said Regulation, for the words "tendered or delivered either personally to the party who is intended to be bound by it," the following shall be substituted, namely:—

Amendment
of section 106.

"either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party."

49. In section 107 of the said Regulation, after the words "by delivery of possession", where they first occur, the following paragraph shall be inserted, namely:—

Amendment
of section 107.

"Where a lease of immovable property is made by a registered instrument, such instrument or, where there are more instruments than one, each such instrument shall be executed by both the lessor and the lessee."

50. In section 108 of the said Regulation.—

Amendment
of section 108.

(a) in clause (h)

(i) ~~(h)~~ after the words "the lessee may" the words "even after the determination of the lease" shall be inserted; and

(ii) for the words "during the continuance of the lease," the words "whilst he is in possession of the property leased but not afterwards," shall be substituted; and

(b) in clause (o), after the words "or fell" the words "or sell" shall be inserted, and after the words "or damage buildings," the words "belonging to the lessor or" shall be inserted.

act
Amendment
of section 111.

51. In clause (g) of section 111 of the said Regulation.—

(a) the words "or the lease shall become void" shall be omitted;

(b) after the words "title in himself" the following shall be inserted, namely:—

"or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event";

(c) for the words "either case" the words "any of these cases" shall be substituted; and

(d) for the words "does some act showing" the words "give notice in writing to the lessee of" shall be substituted.

act
Insertion of
new section
114 A.

52. After section 114 of the said Regulation, the following section shall be inserted, namely:—

Relief against
forfeiture in
certain other
cases.

"114-A. Where a lease of immovable property has been determined by forfeiture for a breach of an express condition which provides that on breach thereof the lessor may re-enter, no suit for ejectment shall lie unless and until the lessor has served on the lessee a notice in writing—

(a) specifying the particular breach complained of; and

(b) if the breach is capable of remedy, requiring the lessee to remedy the breach; and the lessee fails within a reasonable time from the date of the service of the notice, to remedy the breach, if it is capable of remedy.

Nothing in this section shall apply to an express condition against the assigning, under-letting, parting with the possession, or disposing of the property leased, or to an express condition relating to forfeiture in case of non-payment of rent."

act
Substitution
of new section
for section 119

53. For section 119 of the said Regulation, the following section shall be substituted, namely:—

"119. If any party to an exchange or any person claiming through or under such party is by reason of any defect in the title of the other party deprived of the thing or any part of the thing received by him in exchange, then, unless a contrary intention appears from the terms of the exchange, such other party is liable to him or any person claiming through or under him for loss caused thereby, or at the option of the person so deprived, for the return of the thing transferred, if still in the possession of such other party or his legal representative or a transferee from him without consideration."

Right of party
deprived of
thing received
in exchange.

act

54. In section 128 of the said Regulation, after the words "debts due by" the words "and liabilities of" shall be inserted.

Amendment
of section 128.

55. In section 130 of the said Regulation:—
after the words "The transfer of an amicable claim"
the words "whether with or without consideration" shall
be inserted.

Amendment
of section 130.

56. Nothing in any of the following provisions of this Regulation namely sections 2, 6, 7, 12, 15, 16, 24, 27, clause (c) of section 28, sections 29, 30, 41, 47, 49, 51, 52, 53 and 55 shall be deemed in any way to affect—

Saving clause.

(a) the terms of incidents of any transfer of property made or effected before the first day of.....

(b) the validity, invalidity, effect or consequences of anything already done or suffered before the aforesaid date,

(c) any right, title, obligation or liability already acquired, accrued or incurred before such date, or

(d) any remedy or proceeding in respect of such right, title, obligation or liability and nothing in any other provision of this Regulation shall render invalid or in any way affect anything already done before the first day of.....in any proceeding pending in a Court on that date; and any such remedy and any such proceeding as is herein referred to may be enforced, instituted or continued, as the case may be, as if this Regulation had not been passed.

As
Sh. 2 Sec
5.11 be
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/
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Statement of Objects and Reasons.

The Transfer of Property Regulation in Mysore was passed in 1918 on the lines of the British Indian Act of 1882 and all amendments passed there up to 1918 were

taken into consideration. The British Indian Act has subsequently been amended largely by Act XX of 1929 which has made substantial changes in many sections and has set at rest points on which there have been conflicting decisions. It is considered desirable to adopt these amendments as some of them are beneficial and it is convenient not to have a law in this respect different from that in British India unless dictated by local conditions. A bill has accordingly been drafted.

In the bill it has been sought to remedy defects which have led to inconvenience or anomalous results and to incorporate new principles of importance which have been judicially recognised.

Special attention is, however, drawn to the following principles included in the bill :—

(1) Provision is made so that registration will amount to notice of the document registered :

(2) Constructive notice to an agent of a fact material to the course of business in which the agent is engaged will be notice of that fact to the principal. The agent must not have fraudulently concealed the fact from his principal :

(3) The validity of transfers in favour of a class, when some members of that class are unable to take, is recognised so that they may enure to the benefit of those members of the class who are capable of taking ;

(4) The doctrine of part performance is recognised. By this doctrine the transferee is protected where the contract to transfer is followed by part performance and the contract is made enforceable even though the contract is not registered. At the same time, care is taken to see that the law of registration is not evaded ;

(5) In a mortgage by conditional sale, the condition must be embodied in the same deed ;

(6) Provision is made to require the mortgagee to transfer, when so required, the mortgage debt to a third person named by the mortgagor ;

(7) It is made clear that the mortgagor has a right to inspect and take copies of the documents of title relating to the mortgaged property which are in the possession of the mortgagee ;

(8) It is also made clear that the mortgagor has the option to redeem several mortgages to the same mortgagee separately or simultaneously ;

(9) There is no express provision in the Regulation allowing a mortgagee to make necessary improvements to the mortgaged property. This is now provided for:

(10) Statutory recognition is given to the mortgagor's power to lease so as to bind the mortgagee subject to certain safeguards;

(11) Remedy of foreclosure is abolished in the case of all mortgages except a mortgage by conditional sale or an anomalous mortgage providing expressly for foreclosure;

(12) Mortgagee is obliged to enforce several mortgages by the same mortgagor simultaneously in the absence of contract to the contrary;

(13) Provision is made for the court to stay a suit for enforcing the personal remedy against the mortgagor till the mortgagee has exhausted his remedies against the mortgaged property;

(14) The principle of subrogation is extended so that all persons who have an interest in the mortgaged property except the mortgagor will be entitled to be substituted in the place of the creditor who is paid off;

(15) The law of merger is modified so that the creditor may have the benefit of keeping his own incumbrance as well as those which he has paid off alive against subsequent incumbrances;

(16) Leases will be required to be executed by both parties.

Notes on Clauses.

Clause 2.—Notice as defined in section 3 includes both actual and constructive notice. This gave rise to a conflict of decisions in British India whether registration of a document is of itself constructive notice of the transaction effected by the document. Since the system of registration has been in existence in the State for over 70 years and is of general application, one of the objects for which instruments are required to be registered would be defeated if registration is to be held as not implying notice. Under the Transfer of Property Regulation most of the transfers of immovable property have to be effected by registered instruments and some few where property is of low value are allowed to be effected by delivery of possession. The means of search in registration offices are within the powers of a person taking a transfer. It is therefore desirable that express provision should be made in the Regulation itself making it clear that registration

of an instrument relating to immovable property amount to notice of the instrument from the date of the instrument or from the date on which a memorandum of registered instrument has been filed by a Sub-Registrar in whose jurisdiction a property is situated when it has been registered in another jurisdiction. This is provided for in Explanation I of the definition of "Notice."

Explanation II provides that the person dealing with any immovable property shall be deemed to have notice of the title of the person who for the time being is in actual possession. There was some uncertainty in regard to this. It does not seem reasonable that a person entering into a transaction relating to immovable property should ignore the question of possession or neglect to inquire into the title of the person in actual possession of such property. Notice in this case is not extended to possession which is merely of a constructive nature.

The last portion of the existing definition of notice which relates to notice through an agent is defective in as much as it may be construed as being restricted to cases of express notice. Explanation III amends the law as to notice to an agent by widening the definition so as to include a fact of which the agent has notice whether express or constructive. This is in accordance with the well-established principle that the agent stands in the place of his principal with reference to the business on hand so that his acts and knowledge are the acts and knowledge of his principal. If notice to the agent whether actual or constructive is not made notice to the principal, notice may be avoided in every case by employing agents. In the amendment there are safeguards to the effect that the notice must be of a fact which is material to the course of the business in which the agent is engaged, and that the agent must not fraudulently have concealed the fact from his principal.

Clause 3.—This provides for the case where a man makes a settlement of his property in trust and constitutes himself as a trustee. An explanation has been added to make it clear that the words "living person" include corporations and other associations of persons.

Clause 4.—A right to receive maintenance is a personal right and it is in accordance with public policy that these rights which are generally created for the maintenance or personal enjoyment of a qualified owner shall

not be alienable. Hence a new clause is added to section 6. This does not apply to arrears of maintenance which have accrued due.

Clause 5.—Sections 11 and 40 of the Regulation refer to affirmative and negative covenants in a transfer. Section 11 refers to rights as between a transferor and a transferee while section 40 relates to the rights of third parties against transferees. The words “to compel its enjoyment” used in the second paragraph of section 11 and in the first paragraph of section 40 indicate that affirmative covenants for the beneficial enjoyment of one piece of the property of which the other piece has been transferred can in all cases be enforced and this is based on the principle in the English case of *Tuck* VS

Moxhay. But later English decisions which have been followed in India made it clear that only covenants of a negative character and imposing no pecuniary obligation can be enforced under the rule in *Tuck's* case against purchasers from the transferee or covenantor. It is therefore proposed to amend the second paragraph of section 11 and the first paragraph of section 40 so as to make it clear that, although an affirmative covenant is not by itself invalid as between a transferor and a transferee (Section 11) negative or restrictive covenants only can be specifically enforced against a purchaser from a transferee.

Clause 6.—Section 15 is so amended as to make a gift to a class, some of whom are or may be incapacitated from taking, enure for the benefit of those members of the class who are capable of taking. This is in accordance with the tendency of decisions later than *Leake vs. Robinson*, the rule in which was embodied in present section 15.

Clause 7.—The amendment of section 15 renders a reference to that section in section 16 unnecessary. But provision is however made for the case where a transfer fails as to all the members of the class by reason of the rules in sections 13 and 14.

Section 18 relates to the rule against accumulations and allows accumulations for a period of one year only in certain cases. In England, the *Thellusson Act* allowed a much longer period. Even in India in cases which were not governed by section 18, the rule followed was that if there was nothing illegal or unreasonable in a direction to accumulate, such direction should be given effect to. It

is desirable to allow accumulations for longer periods to lay down definitely on the lines of the English law the periods and the objects for which a condition as to accumulation should be held valid. It is also desirable to accept certain well recognised exceptions in law such as those relating to provisions for the payment of debts, raising portions for children and the repairs to the property transferred. The restrictions contained in sections 14 and 16 and also the restrictions as to accumulations under section 18 should not apply to charities. section 18 dealing with accumulations should come after section 16 and it is numbered 17. The present section 17 which deals with charities is numbered 18.

Clause 8.—Section 39 now provides that a right to receive maintenance or a provision for advancement or marriage from the profits of immovable property can be enforced against the transferee if the transfer has been made with the intention of defeating the right and the transferee has notice of the intention. In actual practice it will be very difficult to adduce proof of mere intention. As it is desirable to protect persons entitled to maintenance or for whom provision for advancement has been made, it is necessary that the section be amended so that there may be no necessity to refer to the transferor's intention to defeat or for the transferee to be aware of such intention. As the illustration to the section is not consistent with the section as it does not make any reference to the intention of transferor, it is omitted.

Clause 9.—The amendment makes it clear that only negative or restrictive covenants can be specifically enforced against a third person as has been explained in the note to clause 5.

Clause 10.—This makes it clear that erroneous representation may either be innocent or tainted with fraud.

Clause 11.—The use of words “active prosecution” and “contentious” has given rise to difficulties in construing section 52. It has given room for a difference of view as to when a suit may be said to be in active prosecution and when it may be said to be contentious. The word “pendency” is therefore substituted for “active prosecution” and the word “contentious” omitted. An explanation is added to make it clear when the pendency of a suit or proceeding shall be deemed to commence and

when it shall be deemed to end. Collusive suits are excluded as they are not really suits at all, but merely a pretence. Further to attract the doctrine of *lis pendens* the suit must be pending in a court of competent jurisdiction and this has been made clear in the explanation.

Clause 12.—The section has been remodelled. The first paragraph of the old section referred both to transfers made with intent to defraud creditors and to transfers made in fraud of other transferees. It is desirable to split the section into two parts, sub-section (1) referring to creditors and sub-section (2) to other transferees, on the lines of the English law of Property Act, 1925. This division eliminates two difficulties in the construction of the present section. The first difficulty is that paragraph 3 can hardly apply to a case of contest between a prior voluntary transfer and a subsequent transfer for consideration. The second difficulty is in the use of the words “may be presumed” in the second paragraph which are being interpreted in different ways in the two cases. This inconsistency has been removed by the division of the section into two parts and the inclusion of a special provision in the last paragraph of the second sub-section for cases of conflict between a transfer without consideration and a subsequent transfer with consideration.

Paragraph 2 of present section 53 lays down a rule of evidence which has also given rise to considerable difficulty in interpretation. The general trend of decisions was that the court should decide in each case whether on all the circumstances the intention of the transferor was to defraud, defeat or delay his creditors and this is also the course of legislation. It is therefore proposed to delete para 2 of section 53 and to have the determination of the question of intent to be dealt with according to the ordinary rules of evidence.

The reference to prior ‘transferees and co-owners or other persons having an interest’ is superfluous as it is not clear in what cases they can be defeated by a subsequent voluntary transfer. The corresponding words have therefore been omitted.

It has been provided that the law of insolvency shall not be affected. To protect the transferee from being exposed to a multiplicity of suits, it is desirable to provide that a suit by a creditor must be a representative suit on behalf of all the creditors, and accordingly paragraph 4 has been inserted in sub-section (1).

Clause 13.—Courts have been applying the equitable doctrine of part performance to cases of transfer which have not been validated by registration on the ground that when one party has executed his part of the agreement in the confidence that the other party would do the same, it would be inequitable and a fraud, if the latter should refuse, to suffer this refusal to work to the prejudice of the former. Ignorant transferees in the country who have partly performed the contract require some measure of protection. Statutory recognition is therefore given by this clause to the doctrine of part performance. At the same time certain safeguards as mentioned below are provided in order that the law of registration may not be evaded and that the introduction of the doctrine does not lead to perjuries and frauds which it is the object of the doctrine to prevent.

(1) It is provided that the agreement should be in writing.

(2) The transferee should take possession of the property or if already in possession should, in addition to continuing in possession, do some act in furtherance of the contract.

(3) The transferor is debarred from enforcing against a transferee any right except such as are expressly provided by the contract. The mutual covenants will be operative though no title has passed. This will necessitate the completion of the transfer according to law by execution and registration in order that the transferee may get a marketable title. Thus the law of registration will not be evaded.

(4) There is a further safeguard in that the equities arising out of part performance may not affect the rights of a transferee for value without notice. It would be necessary therefore for the first transferee to have his transfer perfected according to law by registration and thereby acquire an indefeasible title.

Clause 14.—The expression “material defect” in section 55 (1) (a) has been held to include a defect in the title of the seller. Statutory effect is given to this decision by inserting the words “as in the seller’s title thereto.”

In sub-clause (b) of clause (4) of the same section, the unpaid seller’s charge available against the buyer is made enforceable not only against the buyer but against a

transferee from the buyer with notice of the non-payment or a gratuitous transferee, as such lien could otherwise have been defeated by the buyer parting with the property. This clause is also silent as to the date from which interest on the unpaid purchase money should run. It is but fair that interest should run from the date when the buyer is put in possession.

Sub-clause (b) of clause (6) of the same section provides that a buyer's lien for price prepaid can be enforced against the seller and other persons claiming under him with notice of the payment. Gratuitous transferees and legal representatives of the seller could escape liability by pleading that they had no notice. It is proposed to amend the clause by omitting the words "with notice of the payment" so as to permit of the buyer's lien for price prepaid being enforced against all persons claiming under the seller.

Clause 15.—Section 56 as amended provides for the right of marshalling being enforced not only against the seller but also against the mortgagee of the seller.

Clause 16.—It is very often difficult to distinguish a mortgage by conditional sale from sales with a condition of repurchase. The nature of the transaction can only be determined by finding out the intention of the parties. In order to avoid the difficulty it is desirable to lay down a statutory test by which the intention is to be gathered. A proviso is added to clause (c) of section 58 to the effect that no transaction shall be deemed to be a mortgage by conditional sale unless the condition is embodied in the document purporting to effect the sale.

In sub-clause (d) it is made clear that a case where a mortgagee who is entitled to possession but has not received possession or a case where the mortgagee is entitled to appropriate a portion only of the income is a usufructuary mortgage. The definition of a mortgage by deposit of title deeds which is now in section 59 and the definition of an anomalous mortgage which is now in section 98 are brought under Section 58 which contains the definitions of the several kinds of mortgages. The term Bank has been extended so as to include foreign Banks working in Mysore to enable them also to deal in mortgages by deposit of title deeds.

Clause 17.—These amendments are consequential on the transfer of the definition of a mortgage by deposit of title deeds to section 58.

Clause 18.—This makes it clear that the words “mortgagor” and “mortgagee” include all persons deriving title under them.

Clause 19.—The word “payable” gave rise to a diversity of opinion and it was held in some cases that a mortgagor could redeem before the period stipulated for redemption. The contrary view which is the better one is that the mortgagor cannot redeem before the mortgage money has become due. In order to remove the doubt the word “due” has been substituted for the word “payable.”

It is also made clear that on redemption a mortgagee should deliver not only the mortgage deed but all documents in his possession relating to the mortgage. The word “decree” has been substituted for the word “order” as the old practice of passing orders absolute has been abolished. By the addition of the word “only” in the last paragraph, it is made clear that the case mentioned therein is the only exception to the rule of the indivisibility of a mortgage.

Clause 20.—Provision is made to require the mortgagee at the instance of the mortgagor to assign the mortgage to a third person. New section 60-B recognises the right of the mortgagor to inspect and take copies of the documents of title in the possession of the mortgagee.

Clause 21.—The wording of the section has been recast so as to make it clear that it is left to the option of the mortgagor to redeem any one or more of the mortgages.

Clause 22.—These amendments are in consonance with the amendments to sections 60 and 58 (d).

Clause 23.—Provides for cases where the mortgage deed is silent as to the rate of interest.

Clause 24.—Since there is no express provision in the Regulation dealing with improvements to the mortgaged property, this section has been added. The mortgagee will be entitled to compensation when the improvements are made to preserve the property from deterioration or to prevent the security from becoming insufficient. Provision is made for a mortgagee in possession to remove fixtures as a lessee can do.

Clause 27.—In the absence of an express provision in the Regulation, the question is raised whether the mortgagor in possession is competent to grant a lease of

the mortgaged property during the continuance of the mortgage and whether such a lease is binding on the mortgagee. It is therefore proposed to expressly provide that the mortgagor shall, subject to the express conditions of the mortgage deed, be entitled to grant a lease of the mortgaged property. Certain restrictions are however imposed to safeguard the interests of the mortgagee.

Clause 28.—It is desirable that the drastic remedy of foreclosure is used only in exceptional cases. It is therefore proposed to confine the remedy to the case of a mortgagee by conditional sale or of a mortgagee under an anomalous mortgage whereby the express terms of which the parties have stipulated for foreclosure, and to disallow it in other cases.

Clause 29.—When a mortgagee holds several mortgages in respect of the same or different properties, it will be prejudicial to the mortgagor if the mortgagee is allowed to enforce one mortgage and keep the other mortgages alive. The principle of consolidation is proposed to be applied to the mortgagee and he should enforce all the mortgages or none at all unless there is a contract to the contrary.

Clause 30.—The section has been recast so as to remove certain doubts that had arisen. The personal remedy declared by section 68 is additional to the remedies provided in section 67 and this concurrent remedy sometimes leads to abuse. It is therefore proposed to provide that in clauses (a) and (b) of sub-section (1) the mortgagee should exhaust all his available remedies against the mortgaged property before he seeks to pursue the personal remedy against the mortgagor unless the mortgagee abandons his security.

Clause 32.—It is equitable that a mortgagee though not in possession should be entitled to spend such money as may be necessary for the purposes mentioned in section 72.

The purpose in clause (a) is transferred to section 76 (b) which relates to a mortgagee in possession.

Clause 33.—The new section extends to cases of sale for arrears of other charges of a public nature and of acquisition under the Land Acquisition Regulation. The word “charge” is also avoided as it relates to immovable property and is enforceable as a simple mortgage. The mortgagee will be entitled to claim payment out of the

surplus fund or compensation money. Provision is also made for priorities.

Clause 34.—Sections 74 and 75 are deleted and the incidents therein which are based on the principle of subrogation are embodied in new sections 92 and 94.

Clause 36.—The principle of tacking embodied in section 80 is transferred to section 93 to come after subrogation.

Clause 37.—The change is merely verbal.

Clause 38.—The principle of contribution is made applicable by this amendment to cases where the mortgaged property is subsequently divided into distinct and separate portions held in severalty. It further fixes the date of the mortgage as the date at which the valuation for the purpose of contribution should be made.

Clause 39.—Provision is made requiring the mortgagee to file all documents of title and also a draft reconveyance or an acknowledgment before he is entitled to draw the money.

Clause 40.—A proviso has been added making it clear that where the mortgagor has deposited the amount without a previous tender and has subsequently withdrawn it, interest shall be payable from date of withdrawal. It is not reasonable that the mortgagor should withdraw the money and at the same time get the benefit of cessation of interest.

Clause 41.—Section 91 has been remodelled omitting what is considered superfluous and combining the clauses where suitable. An attachment does not create an interest and there is no reason why an attaching creditor should have the right of redemption.

Clause 42.—Sections 74 and 75 have been omitted and the principle of subrogation is provided for in the new section 92 and applied to all persons having an interest in the mortgaged property, *i.e.*, all those referred to in section 91 as having the right of redemption. The section gives a full and extended expression to the doctrine of subrogation. A person advancing money for redeeming a mortgage is given the right of subrogation, but it is provided that the payment should however have been made under an agreement to subrogate reduced to writing and registered.

As the principle of tacking is closely allied to that of subrogation, section 80 is renumbered as 93 and placed after section 92.

Section 94 provides for the doctrine of foreclosing down which was partly contained in section 75.

Clause 44.—As there is no clear provision regarding the rights and liabilities of parties to a mortgage by deposit of title deeds, section 96 has been added.

Clause 45.—There has been a doubt whether a charge can be enforced against a transferee for consideration without notice. It is made clear that it cannot be enforced against such transferees.

Clause 46.—It may generally be taken to be the intention of a creditor and to his benefit to keep his own incumbrances as well those which he has paid off alive. The section is accordingly amended.

Clause 48.—Service by post is a recognised mode of service, and provision is made for serving a notice by post.

Clause 49.—Since a lease contains covenants both on the part of the lessor and the lessee, it is desirable that it should be executed by both.

Clause 52.—There is no provision now for relief against forfeiture where it accrues on breach of an express condition which provides that on breach thereof the lessor may re-enter although the breach may be capable of easy remedy. It is desirable that such a provision should be introduced here.

Clause 53.—The section is widened in its scope. It provides for the rights of the transferee also. It is also provided that the party can get back the thing transferred only if it is still in the possession of the other party.

Clause 56.—In this clause the provisions of the bill which are not to have retrospective operation are specified.

General and Revenue
Secretariat

File No.

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in a book

Serial No.

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BILL TO AMEND THE TRANSFER OF PROPERTY ACT
FOR CERTAIN PURPOSES.

Report of the Select Committee on the Bill
to amend the Transfer of Property Act for cer-
tain purposes.

We, the undersigned members of the Select Committee to which the Bill to amend the Transfer of Property Act for certain purposes was referred, have considered the Bill and have now the honour to submit this our Report

2. Clause 16. The definition of "Bank" given in the Explanation to clause (f) proposed to be added is not wide enough to include ^{(Banks like} the Imperial Bank of India which are constituted by Statutes, Charter or Letters Patent. The ^{Law} system of mortgage by deposit of title deeds must be made available to such banks also if their branches are opened here. Therefore, for the Explanation to clause (f) of Section 58, the following may be substituted:--

"Explanation.- "Bank" in this clause means an association or company formed principally for the purpose of engaging^{ing} on the business of banking and registered under the provisions of the law relating to Companies for the time being in force in Mysore, or in the United Kingdom or in any of the Colonies or Dependancies thereof, or in British India or in any

other Indian States which may be notified by the Government in the official Gazette in this behalf or incorporated by an Act of Parliament or of the Central Legislature or of a Provincial Legislature in India or by Royal Charter or Letters Patent."

3. Clause 28. ~~Subclause (a)~~ Sub Clause (c) may be altered as follows:--

(c) "In clause (a) for the words "a simple mortgagee as such" the following words shall be substituted, viz., "any mortgagee, other than a mortgagee by conditional sale or a mortgagee under an anomalous mortgage by the terms of which he is entitled to foreclose".

As the changes are not material, the Bill need not be republished.

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and
[Messrs. K.R. Srinivasa Iyengar, B.S. Puttaswami were unable to be present on the 5th May (first day of the meeting and Messrs. P. Subbarama Chetty and B.S. Puttaswami on the 6th (second day of the meeting).]

THE TRANSFER OF PROPERTY (Amendment)
SUPPLEMENTARY BILL.

Report of the Select Committee on the
Transfer of Property (Amendment) Supplementary
Bill.

We, the members of the Select Committee
appointed to consider the Transfer of Property
(Amendment) Supplementary Bill, have considered
the Bill and have now the honour to submit this
our Report.

2. We are of opinion that no changes ^{is} are
necessary. ~~as~~ The measure introduces amendments
which are consequential on the Transfer of Pro-
perty Amendment Bill.

3. As no changes ~~are~~ recommended, the Bill
need not be re-published.

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07 [Messrs. B.S. Puttaswamy and D. Subbarama
Chetty were unable to be present at the
meeting.]

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THE TRANSFER OF PROPERTY (AMENDMENT)
SUPPLEMENTARY BILL.

Report of the Select Committee on the
Transfer of Property (Amendment) Supplementary
Bill.

We, the members of the Select Committee appointed to consider the Transfer of Property (Amendment) Supplementary Bill, have considered the Bill and have now the honour to submit this our Report.

2. We are of opinion that no change is necessary. The measure introduces amendments which are consequential on the Transfer of Property Amendment Bill.

3. As no change is recommended, the Bill need not be re-published.

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NOTIFICATION.

No. 3780—L. C., Bangalore, dated 24th May 1938.

Under Standing Order No. 49 of the standing orders for the conduct of business of the Mysore Legislative Council, the following Report of the Select Committee on the Bill to amend the Transfer of Property Act for certain purposes is published for general information.

By Order,
A. SUNDARARAJA RAO,
Secretary,
Mysore Legislative Council.

Report of the Select Committee on the Bill to amend the Transfer of Property Act for certain purposes.

We, the undersigned members of the Select Committee to which the Bill to amend the Transfer of Property Act for certain purposes was referred, have considered the Bill and have now the honor to submit this our Report.

2. *Clause 16.*—The definition of “Bank” given in the Explanation to clause (f) proposed to be added is not wide enough to include Banks like the Imperial Bank of India which are constituted by Statutes, Charter or Letters Patent. The law of mortgage by deposit of title deeds must be made available to such banks also if their branches are opened here. Therefore, for the Explanation to clause (f) of Section 58, the following may be substituted :—

“*Explanation.*—‘Bank’ in this clause means an Association or company formed principally for the purpose of engaging on the business of banking and registered under the provisions of the law relating to companies for the time being in force in Mysore, or in the United Kingdom or in any of the Colonies or Dependancies thereof, or in British India or in any other Indian States which may be notified by the Government in the official Gazette in this behalf or incorporated by an Act of Parliament or of the Central Legislature or of a Provincial Legislature in India or by Royal Charter or Letters Patent.”

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3. *Clause 28.*—Sub-Clause (c) may be altered as follows:—

(c) In clause (a) for the words “a simple mortgagee as such” the following words shall be substituted, *viz.*, “any mortgagee, other than a mortgagee by conditional sale or a mortgagee under an anomalous mortgagee by the terms of which he is entitled to foreclose.”

As the changes are not material, the Bill need not be re-published.

S. P. RAJAGOPALACHARI (Chairman).

M. VENKATESA IYENGAR.

MIRLE N. LAKSHMINARANAPPA.

K. R. SRINIVASAIENGAR.

BELUR SRINIVASAIENGAR.

C. HAYAVADANA RAO.

P. SUBBARAMA CHETTY.

Suswami was unable to be present at the meeting.

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NOTIFICATION.

No. 3781—L. C., Bangalore, dated 24th May 1938.

Under Standing Order No. 49 of the standing orders for the conduct of business of the Mysore Legislative Council, the following Report of the Select Committee on the Transfer of Property (Amendment) Supplementary Bill is published for general information.

By Order,
A. SUNDARARAJA RAO,
Secretary,
Mysore Legislative Council.

**Report of the Select Committee on the Transfer of Property
(Amendment) Supplementary Bill.**

We, the members of the Select Committee appointed to consider the Transfer of Property (Amendment) Supplementary Bill, have considered the Bill and have the honor to submit this our Report.

2. We are of opinion that no change is necessary. The measure introduces amendments which are consequential on the Transfer of Property Amendment Bill.

3. As no change is recommended, the Bill need not be re-published.

S. P. RAJAGOPALACHARI (*Chairman*).
M. VENKATESA IYENGAR.
MIRLE N. LAKSHMINARANAPPA.
K. R. SRINIVASAIENGAR.
BELUR SRINIVASAIENGAR.
C. HAYAVADANA RAO.
P. SUBBARAMA CHETTY.

Mr. B. S. Puttuswami was unable to be present at the meeting.

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BILL TO AMEND THE TRANSFER OF PRO-
PERTY ACT FOR CERTAIN PURPOSES.

(AS AMENDED BY THE SELECT COMMITTEE.)

[Portions omitted are enclosed in square brackets and additions are indicated in italics.]

**Bill to amend the Transfer of Property Act for
certain purposes.**

(As amended by the Select Committee.)

Whereas it is expedient to amend the Transfer of Property Act, 1918, for the purposes hereinafter appearing ;
It is hereby enacted as follows :—

Short title and
commence-
ment.

1. (1) This Act may be called the Transfer of Property (Amendment) Act, 1938.

(2) It shall come into force on the first day of

Amendment
of Section 3.

.....
2. In section 3 of the Transfer of Property Act (hereinafter referred to as the said Act), for the last paragraph containing the definition of "notice," the following shall be substituted, namely :—

"a person is said to have notice" of a fact when he actually knows that fact, or when, but for wilful abstention from an inquiry or search which he ought to have made, or gross negligence, he would have known it.

Explanation I.—Where any transaction relating to immovable property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part of or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration or, if the instrument has been registered under sub-section (2) of section 30 of the Mysore Registration Act, 1903, from the earliest date on which a memorandum thereof has been filed by any Sub-Registrar under section 66 of that Act :

Provided that—

(1) the instrument has been registered and its registration completed in the manner prescribed by the Mysore Registration Act, 1903, and the rules made thereunder,

(2) the instrument has been duly entered or filed, as the case may be, in the books kept under section 51 of that Act, and

(3) the particulars regarding the transaction to which the instrument relates have been correctly entered in the indexes kept under section 55 of that Act.

Explanation II.—Any person acquiring any immovable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof.

Explanation III.—A person shall be deemed to have had notice of any fact if his agent acquires notice thereof whilst acting on his behalf in the course of business to which that fact is material :

Provided that, if the agent fraudulently conceals the fact, the principal shall not be charged with notice thereof as against any person who was a party to or otherwise cognizant of the fraud."

Amendment
of section 5.

3. In section 5 of the said Act, after the words "or to himself" the words "or to himself" shall be inserted ; and to the same section the following paragraph shall be added, namely :

"In this section 'living person' includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals."

Amendment
of section 6.

4. In section 6 of the said Act, after clause (d) the following clause shall be inserted, namely :—

"(dd) A right to future maintenance, in whatsoever manner arising, secured or determined, cannot be transferred."

Amendment
of section 11.

5. For the second paragraph of section 11 of the said Act, beginning with the words "nothing in this section" and ending with the words "in a particular manner" the following shall be substituted, namely :—

"Where any such direction has been made in respect of one piece of immovable property for the purpose of securing the beneficial enjoyment of another piece of such property, nothing in this section shall be deemed to affect any right which the transferor may have to enforce such direction or any remedy which he may have in respect of a breach thereof."

Amendment
of section 15.

6. In section 15 of the said Act, for the words "as regards the whole class," the following words shall be substituted, namely :—

“in regard to those persons only and not in regard to the whole class.”

7. For sections 16, 17 and 18 of the said Act, the following sections shall be substituted, namely:—

Substitution of new sections for sections 16, 17 and 18.

“16. Where by reason of any of the rules contained in sections 13 and 14, an interest created for the benefit of a person or of a class of persons fails in regard to such person or the whole of such class, any interest created in the same transaction and intended to take effect after or upon failure of such prior interest also fails.

Transfer to take effect on failure of prior interest.

“17. (1) Where the terms of a transfer of property direct that the income arising from the property shall be accumulated either wholly or in part during a period longer than—

Direction for accumulation.

(a) the life of the transferor, or

(b) a period of eighteen years from the date of the transfer,

such direction shall, save as hereinafter provided, be void to the extent to which the period during which the accumulation is directed exceeds the longer of the aforesaid periods, and at the end of such last-mentioned period the property and the income thereof shall be disposed of as if the period during which the accumulation has been directed to be made had elapsed.

(2) This section shall not affect any direction for accumulation for the purpose of—

(i) the payment of the debts of the transferor or any other person taking any interest under the transfer, or

(ii) the provision of portions for children or remoter issue of the transferor or of any other person taking any interest under the transfer, or

(iii) the preservation or maintenance of the property transferred;

and such direction may be made accordingly.

“18. The restrictions in sections 14, 16 and 17 shall not apply in the case of a transfer of property for the benefit of the public in the advancement of religion, knowledge, commerce, health, safety, or any other object beneficial to mankind.”

Transfer in perpetuity for benefit of public.

Amendment
of section 39.

8. In section 39 of the said Act—

(a) the words “with the intention of defeating such right” shall be omitted, and for the words “of such intention” the word “thereof” shall be substituted; and

(b) the *illustration* shall be omitted.

Amendment
of section 40.

9. In section 40 of the said Act for the words “of the latter property or to compel its enjoyment in a particular manner,” the words “in a particular manner of the latter property” shall be substituted.

Amendment
of section 43.

10. In section 43 of the said Act, after the word “person” the words “fraudulently or” shall be inserted.

Amendment
of section 52.

11. (1) In section 52 of the said Act—

(a) for the words “active prosecution” the word “pendency” shall be substituted;

(b) for the words “a contentious” the word “any” shall be substituted; and

(c) after the words “suit or proceeding,” where they occur for the first time, the words “which is not collusive and” shall be inserted.

(2) To the same section the following *Explanation* shall be added, namely :—

“*Explanation.*—For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.”

Substitution
of new section
for section 53.

12. For section 53 of the said Act, the following section shall be substituted, namely :—

Fraudulent
transfer.

“53. (1) Every transfer of immovable property made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed.

Nothing in this sub-section shall impair the rights of a transferee in good faith and for consideration.

Nothing in this sub-section shall affect any law for the time being in force relating to insolvency.

A suit instituted by a creditor (which term includes a decree-holder whether he has or has not applied for execution of his decree) to avoid a transfer on the ground that it has been made with intent to defeat or delay the creditors of the transferor, shall be instituted on behalf of, or for the benefit of, all the creditors.

(2) Every transfer of immovable property made without consideration with intent to defraud a subsequent transferee shall be voidable at the option of such transferee.

For the purposes of this sub-section, no transfer made without consideration shall be deemed to have been made with intent to defraud by reason only that a subsequent transfer for consideration was made."

13. After section 53 of the said Act, the following section shall be inserted, namely :—

Insertion of
new section
53-A.

Part
Performance.

"53-A. Where any person contracts to transfer for consideration any immovable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty,

and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract,

and the transferee has performed or is willing to perform his part of the contract,

then, notwithstanding that the contract, though required to be registered, has not been registered, or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract;

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof."

Amendment
of section 55.

14. In section 55 of the said Act—

(a) in sub-clause (a) of clause (1), after the word “property” the words “or in the seller’s title thereto” shall be inserted;

(b) in sub-clause (b) of clause (4), after the word “buyer,” where it occurs for the second time, the words “any transferee without consideration or any transferee with notice of the non-payment,” shall be inserted; and after the words “on such amount or part” the words from the date on which possession has been delivered” shall be added; and

(c) in sub-clause (b) of clause (6), the words “with notice of the payment” shall be omitted.

Substitution
of new section
for section 56.
Marshalling
by subsequent
purchaser.

15. For section 56 of the said Act, the following shall be substituted, namely :—

“56. If the owner of two or more properties mortgages them to one person and then sells one or more of the properties to another person, the buyer is, in the absence of a contract to the contrary, entitled to have the mortgage-debt satisfied out of the property or properties not sold to him, so far as the same will extend, but not so far as to prejudice the rights of the mortgagee or persons claiming under him or of any other person who has for consideration acquired an interest in any of the properties.”

Amendment
of section 58.

16. In section 58 of the said Act, (a) to clause (c) the following proviso shall be added, namely :—

“Provided that no such transaction shall be deemed to be a mortgage, unless the condition is embodied in the document which effects or purports to effect the sale:”

(b) in clause (d)—

(i) after the words “Where the mortgagor delivers possession” the words “or expressly or by implication binds himself to deliver possession” shall be inserted;

(ii) for the words “and to appropriate them” the words “or any part of such rents and profits and to appropriate the same” shall be substituted; and

(iii) after the words “or partly in lieu of interest,” for the word “and” the word “or” shall be substituted; and

(c) after clause (e) the following clauses shall be added, namely :—

“(f) The transaction is called a mortgage by deposit of title deeds where a person, in any area to which this provision may be extended by the Government by notification in the Official Gazette, delivers to a Bank or its authorized agent documents of title relating to immovable property with intent to create a security thereon and accompanied by a memorandum in writing signed by the debtor specifying such property and the amount of credit given or agreed to be given by the Bank on the security of such property, provided that a copy of such memorandum under the seal of the Bank and the signature of its authorised agent is delivered or transmitted by registered post within ten days of the delivery to the bank as aforesaid of the memorandum, to every registering officer within whose district or sub-district the whole or any portion of such property is situated, or where a special registering officer is appointed or designated by Government in this behalf, to such registering officer and such registering officer shall thereupon file the copy in his Book No. 1.

[*Explanation.*—“Bank” in this clause means an association or company with limited liability formed principally for the purpose of engaging ~~on~~ the business of banking and registered under the provisions of the law relating to companies for the time being in force in Mysore or in British India or in any other Indian State which may be notified by the Government in the Official Gazette in this behalf.]

“**Explanation.**—‘Bank’ in this clause means an association or company formed principally for the purpose of engaging ~~on~~ the business of banking and registered under the provisions of the law relating to Companies for the time being in force in Mysore, or in the United Kingdom or in any of the Colonies or Dependencies thereof, or in British India or in any other Indian States which may be notified by the Government in the Official Gazette in this behalf or incorporated by an Act of Parliament or of the Central Legislature or of a Provincial Legislature in India or by Royal Charter or Letters Patent.”

- (g) A mortgage which is not a simple mortgage, a mortgage by conditional sale, an usufructuary mortgage, an English mortgage or a mortgage by deposit of title-deeds within the meaning of this section is called an anomalous mortgage."

Amendment
of section 59.

17. In section 59 of the said Act—

(a) after the words "a mortgage" the words "other than a mortgage by deposit of title deeds" shall be inserted and

(b) the second paragraph and the *Explanation* shall be omitted.

Insertion of
new section
59-A.

18. After section 59 of the said Act, the following section shall be inserted, namely:—

References to
mortgagors
and mort-
gagees to
include per-
sons deriving
title from
them.

"59-A. Unless otherwise expressly provided, reference in this Chapter to mortgagors and mortgagees shall be deemed to include references to persons deriving title from them respectively."

Amendment
of section 60.

19. In section 60 of the said Act,

(a) for the word "payable" the word "due" shall be substituted;

(b) for the words "the mortgage-deed, if any, to the mortgagor" the following words shall be substituted, namely:—

"to the mortgagor the mortgage-deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee;"

(c) for the word "order" the word "decree" shall be substituted; and

(d) after the words "remaining due on the mortgage, except" the word "only" shall be inserted.

Insertion of
new sections
60-A and 60-B.

20. After section 60 of the said Act, the following sections shall be inserted, namely:—

Obligation to
transfer to
third party
instead of re-
transference
to mortgagor.

"60-A. (1) Where a mortgagor is entitled to redemption, then, on the fulfilment of any conditions on the fulfilment of which he would be entitled to require a re-transfer, he may require the mortgagee, instead of re-transferring the property, to assign the mortgage-debt and transfer the mortgaged property to such third person as the mortgagor may direct; and the mortgagee shall be bound to assign and transfer accordingly.

(2) The rights conferred by this section belong to and may be enforced by the mortgagor or by any encumbrancer notwithstanding an intermediate encumbrance

but the requisition of any encumbrancer shall prevail over a requisition of the mortgagor and, as between encumbrancers the requisition of a prior encumbrancer shall prevail over that of a subsequent encumbrancer.

(3) The provisions of this section do not apply in the case of a mortgagee who is or has been in possession.

60-B. A mortgagor, as long as his right of redemption subsists, shall be entitled at all reasonable times, at his request and at his own cost and on payment of the mortgagee's costs and expenses in this behalf, to inspect and make copies or abstracts of, or extracts from, documents of title relating to the mortgaged property which are in the custody or power of the mortgagee."

Right to inspection and production of documents.

21. For section 61 of the said Act the following section shall be substituted, namely:—

Substitution of new section for section 61.

"61. A mortgagor who has executed two or more mortgages in favour of the same mortgagee shall, in the absence of a contract to the contrary when the principal money of any two or more of the mortgages has become due, be entitled to redeem any one such mortgage separately, or any two or more of such mortgages together."

Right to redeem separately or simultaneously.

22. In section 62 of the said Act—

Amendment of section 62.

(a) after the word "property," where it first occurs, the words "together with the mortgage deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee" shall be inserted;

(b) for the words "the interest of the principal money" the words "or any part thereof a part only of the mortgage money," shall be substituted; and

(c) for the words "the principal money" where they occur for the second time, the words "the mortgage-money or the balance thereof" shall be substituted.

23. In section 63 of the said Act for the words "at the same rate of interests" the words "with interest at the same rate as is payable on the principal, or where no such rate is fixed at the rate of nine per cent per annum" shall be substituted.

Amendment of section 63.

24. After section 63 of the said Act, the following section shall be inserted, namely:—

Insertion of new section 63-A.
Improvements to mortgaged property.

"63-A. (1) Where mortgaged property in possession of the mortgagee has, during the continuance of the mortgage, been improved, the mortgagor, upon redemption,

shall, in the absence of a contract to the contrary, be entitled to the improvement; and the mortgagor shall not, save only in cases provided for in sub-section (2), be liable to pay the cost thereof.

(2) Where any such improvement was effected at the cost of the mortgagee and was necessary to preserve the property from destruction or deterioration or was necessary to prevent the security from becoming insufficient, or was made in compliance with the lawful order of any public servant or public authority, the mortgagor shall, in the absence of a contract to the contrary, be liable to pay the proper cost thereof as an addition to the principal money with interest at the same rate as is payable on the principal, or where no such rate is fixed, at the rate of nine per cent per annum, and the profits, if any, accruing by reason of the improvement shall be credited to the mortgagor.

(3) Notwithstanding anything in sub-section (1) a mortgagee may remove at any time whilst he is in possession of the property mortgaged, but not afterwards, all things which he has attached to the earth, provided he leaves the property in the state in which he received it."

Amendment
of section 64.

25. In section 64 of the said Act, the words "for a term of years" shall be omitted.

Amendment
of section 65.

26. In section 65 of the said Act.

(a) in clause (d), the words "for a term of years" shall be omitted; and

(b) the words "Nothing in clause (c), or in clause (d), so far as it relates to the payment of future rent, applies in the case of an usufructuary mortgage" shall be omitted.

Insertion of
new section
65 A.

Mortgagor's
power to
lease.

27. After section 65 of the said Act, the following section shall be inserted, namely:—

65-A. (1) Subject to the provisions of sub-section (2) a mortgagor, while lawfully in possession of the mortgaged property, shall have power to make leases thereof which shall be binding on the mortgagee.

(2) (a) Every such lease shall be such as would be made in the ordinary course of management of the property concerned, and in accordance with any local law, custom or usage.

(b) Every such lease shall reserve the best rent that can reasonably be obtained, and no premium shall be paid or promised and no rent shall be payable in advance.

(c) No such lease shall contain a covenant for renewal.

(d) Every such lease shall take effect from a date not later than six months from the date on which it is made.

(e) In the case of a lease of buildings, whether leased with or without the land on which they stand, the duration of the lease shall in no case exceed three years and the lease shall contain a covenant for payment of the rent and a condition of re-entry on the rent not being paid within a time therein specified.

(3) The provisions of sub-section (1) apply only if and as far as a contrary intention is not expressed in the mortgage-deed; and the provisions of sub-section (2) may be varied or extended by the mortgage-deed, and as so varied and extended, shall, as far as may be, operate in like manner and with all like incidents, effects and consequences, as if such variations or extensions were contained in that sub-section."

28. In section 67 of the said Act,—

Amendment
of section 67

(a) for the word "payable" the word "due" shall be substituted;

(b) for the words "an order," wherever they occur, the words "a decree" shall be substituted; and

[(c) for clause (a) the following clause shall be substituted, namely :—

"(a) to authorize any mortgagee, other than a mortgagee by conditional sale or a mortgagee under an anomalous mortgage by the terms of which he is entitled to foreclose, to institute a suit for foreclosure, or an usufructuary mortgagee as such, where he is authorized to appropriate the rents and profits or any part of such grants and profits in payment of the principal money or partly in lieu of interest or partly in payment of the principal money, or a mortgagee by conditional sale as such to institute a suit for sale; or."]

(c) In clause (a) for the words "a simple mortgage as such" the following words shall be substituted, *viz.*, "any mortgagee, other than a mortgagee by conditional sale or a mortgagee under an anomalous mortgage by the terms of which he is entitled to foreclose".

29. After section 67 of the said Act the following section shall be inserted, namely :—

Insertion of
new section
67A.

"67-A. A mortgagee who holds two or more mortgages executed by the same mortgagor in respect of each of which he has a right to obtain the same kind of

Mortgagee
when bound
to bring one
suit on several
mortgages

decree under section 67, and who sues to obtain such decree on any one of the mortgages, shall, in the absence of a contract to the contrary, be bound to sue on all the mortgages in respect of which the mortgage-money has become due."

Substitution
of new section
for section 68.
Right to sue
for mortgage
money.

30. For section 68 of the said Act, the following section shall be substituted, namely:—

"68. (1) The mortgagee has a right to sue for the mortgage money in the following cases and no others, namely:—

- (a) where the mortgagor binds himself to repay the same ;
- (b) where, by any cause other than the wrongful act or default of the mortgagor or mortgagee, the mortgaged property is wholly or partially destroyed or the security is rendered insufficient within the meaning of section 66, and the mortgagee has given the mortgagor a reasonable opportunity of providing further security enough to render the whole security sufficient, and the mortgagor has failed to do so ;
- (c) where the mortgagee is deprived of the whole or part of his security by or in consequence of the wrongful act or default of the mortgagor ;
- (d) where, the mortgagee being entitled to possession of the mortgaged property, the mortgagor fails to deliver the same to him, or to secure the possession thereof to him without disturbance by the mortgagor or any person claiming under a title superior to that of the mortgagor

Provided that, in the case referred to in clause (a), a transferee from the mortgagor or from his legal representative shall not be liable to be sued for the mortgage-money.

(2) Where a suit is brought under clause (a) or clause (b) of sub-section (1), the Court may, at its discretion, stay the suit and all proceedings therein, notwithstanding any contract to the contrary, until the mortgagee has exhausted all his available remedies against the mortgaged property or what remains of it, unless the mortgagee abandons his security and, if necessary, re-transfers the mortgaged property."

Amendment
of section 71.

31. In section 71 of the said Act, the words "for a term of years" shall be omitted.

32. In section 72 of the said Act :—

Amendment
of section 72.

(a) for the words “ When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property, he ” the words “ A mortgagee ” shall be substituted.

(b) clause (a) shall be omitted ;

(c) in clause (b), for the words “ its preservation ” the words “ the preservation of the mortgaged property ” shall be substituted ;

(d) after the words “ nine per cent per annum,” the following Proviso shall be inserted, namely :—

“ Provided that the expenditure of money by the mortgagee under clause (b) or clause (c) shall not be deemed to be necessary unless the mortgagor has been called upon and has failed to take proper and timely steps to preserve the property or to support the title.” and

(e) for the words “ a charge on the mortgaged property, in addition to the principal money, with the same priority and with interest at the same rate ” the following shall be substituted, namely :—

“ added to the principal money with interest at the same rate as is payable on the principal money, or, where no such rate is fixed, at the rate of nine per cent, per annum.”

33. For section 73 of the said Act, the following section shall be substituted, namely :—

Substitution
of new section
for section 73.

“ 73. (1) Where the mortgaged property or any part thereof or any interest therein is sold owing to failure to pay arrears of revenue or other charges of a public nature or rent due in respect of such property, and such failure did not arise from any default of the mortgagee, the mortgagee shall be entitled to claim payment of the mortgage-money, in whole or in part, out of any surplus of the sale proceeds remaining after payment of the arrears and of all charges and deductions directed by law.

(2) Where the mortgaged property or any part thereof or any interest therein is acquired under the Land Acquisition Act, 1894, or any other enactment for the time being in force providing for the compulsory acquisition of immovable property, the mortgagee shall be entitled to claim payment of the mortgage-money, in whole or in part, out of the amount due to the mortgagor as compensation,

(3) Such claims shall prevail against all other claim except those of prior encumbrances, and may be enforced notwithstanding that the principal money on the mortgage has not become due.'

Omission of
sections 74
and 75.
Amendment
of section 76

34. Section 74 and section 75 of the said Act shall be omitted.

35. In section 76 of the said Act :—

- (a) in clause (c), after the words "charges of public nature" the words "and all rent shall be inserted ;
- (b) in clause (h), after the words "deducting the expenses" the words "properly incurred for the management of the property and the collection of rents and profits and the other expenses" shall be inserted, and the words "on the principal-money" shall be omitted and
- (c) in clause (i), the word "gross" shall be omitted

Omission of
section 80.

36. Section 80 of the said Act shall be omitted.

Substitution
of new section
for section 81.

37. For sub-section (i) of section 81 of the said Act the following section shall be substituted, namely :—

"81. (1) If the owner of two or more properties mortgages them to one person and then mortgages one or more of the properties to another person, the subsequent mortgagee is, in the absence of a contract to the contrary entitled to have the prior mortgage-debt satisfied out of the property or properties not mortgaged to him, so far as the same will extend, but not so as to prejudice the rights of the prior mortgagee or of any other person who has for consideration acquired an interest in any of the properties."

Amendment
of section 82.

38. In section 82 of the said Act :—

(a) for the first paragraph beginning with the words "Where several properties," and ending with the words "date of the mortgage" the following shall be substituted, namely :—

"Where property subject to a mortgage belongs to two or more persons having distinct and separate rights of ownership therein, the different shares in or parts of such property owned by such persons are, in the absence of a contract to the contrary, liable to contribute rateably to the debt secured by the mortgage, and, for the purpose of determining the rate at which each such share or part

shall contribute, the value thereof shall be deemed to be its value at the date of the mortgage after deduction of the amount of any other mortgage or charge to which it may have been subject on that date" and

- (b) in the third paragraph, for the word "second" the word "subsequent" shall be substituted.

39. In section 83 of the said Act :—

Amendment
of section 83.

- (a) for the words "has become payable" the words "payable in respect of any mortgage has become due" shall be substituted ;
- (b) for the words "if then in his possession or power" the words "and all documents in his possession or power relating to the mortgaged property" shall be substituted ;
- (c) after the word "mortgage-deed," where it occurs for the second time, the words "and all such other documents" shall be inserted ; and
- (d) the following paragraph shall be added after the words "such other person as aforesaid," namely :—

"Where the mortgagee is in possession of the mortgaged property, the Court shall, before paying to him the amount so deposited, direct him to deliver possession thereof to the mortgagor and at the cost of the mortgagor either to retransfer the mortgaged property to the mortgagor or to such third person as the mortgagor may direct or to execute and (where the mortgage has been effected by a registered instrument) have registered an acknowledgment in writing that any right in derogation of the mortgagor's interest transferred to the mortgagee has been extinguished."

40. In section 84 of the said Act :—

Amendment
of section 84.

- (a) after the words "from the date of the tender or" the words "in a case of a deposit, where no previous tender of such amount has been made," shall be inserted ;
- (b) for the words "as the case may be" the following shall be substituted, namely :—

"and the notice required by section 83 has been served on the mortgagee :

"Provided that, where the mortgagor has deposited such amount without having made a previous tender thereof and has subsequently withdrawn the same or any

part thereof interest on the principal money shall be payable from the date of such withdrawal ;” and

- (c) after the words “tender of the mortgage-money” the words “and such notice has not been given before the making of the tender or deposit, as the case may be” shall be added.

Substitution
of new section
for section 91.

41. For section 91 of the said Act the following section shall be substituted, namely :—

Persons who
may sue for
redemption.

“91. Besides the mortgagor, any of the following persons may redeem, or institute a suit for redemption of, the mortgaged property, namely :—

- (a) any person (other than the mortgagee of the interest sought to be redeemed) who has any interest in, or charge upon, the property mortgaged or in or upon the right to redeem the same ;
- (b) any surety for the payment of the mortgage-debt or any part thereof ; or
- (c) any creditor of the mortgagor who has in a suit for the administration of his estate obtained a decree for sale of the mortgaged property.”

Insertion of
new sections
92, 93 and 94.
Subrogation.

42. After section 91 of the said Act, the following sections shall be inserted, namely :—

“92. Any of the persons referred to in section 91 (other than the mortgagor) and any co-mortgagor shall, on redeeming property subject to the mortgage, have, so far as regards redemption, foreclosure or sale of such property, the same rights as the mortgagee whose mortgage he redeems may have against the mortgagor or any other mortgagee.

The right conferred by this section is called the right of subrogation, and a person acquiring the same is said to be subrogated to the rights of the mortgagee whose mortgage he redeems.

A person who has advanced to a mortgagor money with which the mortgage has been redeemed shall be subrogated to the rights of the mortgagee whose mortgage has been redeemed, if the mortgagor has by a registered instrument agreed that such persons shall be so subrogated.

Nothing in this section shall be deemed to confer a right of subrogation on any person unless the mortgage

in respect of which the right is claimed has been redeemed in full.

93. No mortgagee paying off a prior mortgage, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his original security; and except in the case provided for by section 79, no mortgagee making a subsequent advance to the mortgagor, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his security for such subsequent advance.

Prohibition of tacking.

94. Where a property is mortgaged for successive debts to successive mortgagees, a mesne mortgagee has the same rights against mortgagees posterior to himself as he has against the mortgagor."

Rights of mesne mortgagee.

43. For section 95 of the said Act the following sections shall be substituted, namely :—

Substitution of new sections for section 95.

"95. Where one of several mortgagors redeems the mortgaged property, he shall, in enforcing his right of subrogation under section 92 against his co-mortgagors, be entitled to add to the mortgage-money recoverable from them such proportion of the expenses properly incurred in such redemption as is attributable to their share in the property.

Right of redeeming co-mortgagor to expenses.

96. The provisions hereinbefore contained which apply to a simple mortgage shall, so far as may be, apply to a mortgage by deposit of title-deeds."

Mortgage by deposit of title-deeds.

44. In section 98 of the said Act, for the words "a mortgage not being a simple mortgage, a mortgage by conditional sale, an usufructuary mortgage or an English mortgage or a combination of the first and third, or the second and third, of such forms," the words "an anomalous mortgage" shall be substituted.

Amendment of section 98.

45. In section 100 of the said Act,

Amendment of section 100.

(a) for the words "as to a mortgagor shall, so far as may be, apply to the owner of such property, and the provisions of sections 81 and 82 shall, so far as may be, apply to the person having such charge" the words "which apply to a simple mortgage shall, so far as may be, apply to such charge," shall be substituted; and

(b) after the words "in the execution of his trust" the following words shall be added, namely :—

"and save as otherwise expressly provided by any law for the time being in force, no charge shall be enforced

against any property in the hands of a person to whom such property has been transferred for consideration and without notice of the charge."

Substitution
of new section
for section
101.

No merger in
case of subse-
quent encum-
brance.

46. For section 101 of the said Act, the following section shall be substituted, namely :—

"101. Any mortgagee of, or person having a charge upon immovable property, or any transferee from such mortgagee or charge-holder, may purchase or otherwise acquire the rights in the property of the mortgagor or owner, as the case may be, without thereby causing the mortgage or charge to be merged as between himself and any subsequent mortgagee of, or person having a subsequent charge upon, the same property; and no such subsequent mortgagee or charge-holder shall be entitled to foreclose or sell such property without redeeming the prior mortgage or charge, or otherwise than subject thereto."

Amendment
of section 102.

47. In section 102 of the said Act,

(a) for the words "Where the person or agent on whom such notice should be served cannot be found in the said district, or is unknown" the words "Where no person or agent on whom such notice should be served can be found or is known," shall be substituted;

(b) after the words "and any notice served in compliance with such direction shall be deemed sufficient" the following proviso shall be inserted, namely :—

"Provided that, in the case of a notice required by section 83, in the case of a deposit, the application shall be made to the court in which the deposit has been made."

(c) for the words "Where the person or agent to whom such tender should be made cannot be found within the said district, or is unknown" the words "Where no person or agent to whom such tender should be made can be found or is known," shall be substituted; and

(d) for the words "in such Court as last aforesaid" the words "in any Court in which a suit might be brought for redemption of the mortgaged property" shall be substituted.

Amendment
of section 106.

48. In section 106 of the said Act, for the words "tendered or delivered either personally to the party who is intended to be bound by it," the following shall be substituted, namely :—

"either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party."

49. In section 107 of the said Act, after the words “by delivery of possession”, where they first occur, the following paragraph shall be inserted, namely :—

Amendment
of section 107.

“Where a lease of immovable property is made by a registered instrument, such instrument or, where there are more instruments than one, each such instrument shall be executed by both the lessor and the lessee.”

50. In section 108 of the said Act.—

Amendment
of section 108.

(a) in clause (h)

(i) after the words “the lessee may” the words “even after the determination of the lease” shall be inserted; and

(ii) for the words “during the continuance of the lease,” the words “whilst he is in possession of the property leased but not afterwards,” shall be substituted; and

(b) in clause (o), after the words “or fell” the words “or sell” shall be inserted, and after the words “or damage buildings,” the words “belonging to the lessor or” shall be inserted.

51. In clause (g) of section 111 of the said Act.—

Amendment
of section 111.

(a) the words “or the lease shall become void” shall be omitted;

(b) after the words “title in himself” the following shall be inserted, namely :—

“or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event”;

(c) for the words “either case” the words “any of these cases” shall be substituted; and

(d) for the words “does some act showing” the words “give notice in writing to the lessee of” shall be substituted.

52. After section 114 of the said Act, the following section shall be inserted, namely :—

Insertion of
new section
114 A.

“114-A. Where a lease of immovable property has been determined by forfeiture for a breach of an express condition which provides that on breach thereof the lessor may re-enter, no suit for ejectment shall lie unless and until the lessor has served on the lessee a notice in writing—

Relief against
forfeiture in
certain other
cases.

(a) specifying the particular breach complained of; and

(b) if the breach is capable of remedy, requiring the lessee to remedy the breach ;
and the lessee fails within a reasonable time from the date of the service of the notice, to remedy the breach, if it is capable of remedy.

Nothing in this section shall apply to an express condition against the assigning, under-letting, parting with the possession, or disposing of the property leased, or to an express condition relating to forfeiture in case of non-payment of rent."

Substitution
of new section
for section 119.

Right of party
deprived of
thing received
in exchange.

53. For section 119 of the said Act, the following section shall be substituted, namely :—

"119. If any party to an exchange or any person claiming through or under such party is by reason of any defect in the title of the other party deprived of the thing or any part of the thing received by him in exchange, then, unless a contrary intention appears from the terms of the exchange, such other party is liable to him or any person claiming through or under him for loss caused thereby, or at the option of the person so deprived, for the return of the thing transferred, if still in the possession of such other party or his legal representative or a transferee from him without consideration."

Amendment
of section 128.

54. In section 128 of the said Act, after the words "debts due by" the words "and liabilities of" shall be inserted.

Amendment
of section 130.

55. In section 130 of the said Act :—

after the words "The transfer of an actionable claim" the words "whether with or without consideration" shall be inserted.

Saving clause.

56. Nothing in any of the following provisions of this Act namely sections 2, 6, 7, 12, 15, 16, 24, 27, clause (c) of section 28, sections 29, 30, 41, 47, 49, 51, 52, 53 and 55 shall be deemed in any way to affect—

(a) the terms of incidents of any transfer of property made or effected before the first day of.....

(b) the validity, invalidity, effect or consequences of anything already done or suffered before the aforesaid date,

(c) any right, title, obligation or liability already acquired, accrued or incurred before such date, or

(d) any remedy or proceeding in respect of such right, title, obligation or liability and nothing in any

other provision of this Act shall render invalid or in any way affect anything already done before the first day of.....in any proceeding pending in a Court on that date ; and any such remedy and any such proceeding as is herein referred to may be enforced, instituted or continued, as the case may be, as if this Act had not been passed.

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

No. *75621*

Dated, Bangalore, *6th April* 1935.

From

The General Secretary to the Government of His Highness the Maharaja of Mysore.

To

The Registrar,
High Court of Mysore,
Sir, Bangalore.

The question of amending the Transfer of Property Regulation, 1918, on the lines of the changes introduced in British India by amending the Acts passed subsequent to 1918 is under the consideration of Government and in this connection, I am to request that Government may be furnished with the views of the High Court on the desirability of introducing all or any of the changes made in the said amending Acts.

I have the honor to be,
Sir,
Your most obedient servant,

TRM.2

[Signature]
For General Secretary to Government.
[Signature]

SUBJECT

Section. *Legal*

File No. *57-3*

Serial No. *1*

No.

P 5629/

To

The Registrar, High Court

Diary No. of letter replied to

General and Revenue Secretariat.

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the

193

Date of issue

8/4/38

Signed by

M. N. R. / 12

Sir,

The question of

amending the transfer

of Property Regⁿ 1918 on

the lines of the changes

introduced in 1918 and

by ~~the~~ ^{amendment} of Regⁿ 1918

Acts passed in ^{subsequent to} 1918

is under the consideration

of Govt and in this

connection, I am to request

that you may be kind

to write the views on the

List of enclosures

Copies by

Examined by

done 12/6/38

High Court on the desirability
of introducing ~~amendments~~ all
or any of the changes
made in the ^{in said amending} ~~the said amending~~ Act.

I have etc

^{of}
The General Secy

or holder

Bangalore, 29th November 1935.

FROM

A. Sundararaja Rao, Esq., B.A., B.L.,
~~S. Venkata Ranga Iyengar, Esq., B.A., LL.M.,~~

Registrar, High Court of Mysore.

A.V. Ramanathan, Esq., B.A.,
Chief Secretary to the Government of Mysore,
Bangalore.

SIR,

With reference to your letter no. P. 5629/Legis. 57-34-1, dated the 6th April 1935, requesting the views of the High Court on the desirability of introducing in Mysore all or any of the changes made in the amending Acts relating to Transfer of Property in British India, I am directed to state that, after carefully examining the amendments of the British Indian Transfer of Property Act made in 1929 and comparing them with the Regulation in force in this State, the Judges agree that except in regard to the provisions mentioned below the amendments and additions made in British India may be followed as in many instances they will be beneficial and in others it will be convenient that the law in this State shall not differ unnecessarily from that in British India.

(1) The Judges are against amendment of Sections 2 and 129 of the Regulation, and they recommend that Sections 13 and 14 of the Regulation be left unaltered.

(2) The Judges are against such amendments as have been made in Section 69 of the British Indian Act and the introduction of such provisions as contained in Section 69 A of that Act, as it does not appear to them desirable to allow to a mortgagee in this State a private power of sale or the right to appoint a Receiver, provisions which often give trouble elsewhere and are not likely to work satisfactorily here.

✓ (3) The Judges recommend that the provisions of Section 59 of the Regulation regarding mortgages and those of Section 123 regarding gifts be left unaltered.

✓ (4) In Section 3 it is unnecessary to define "attested" as under the Regulation neither gift-deeds nor mortgage-deeds need be attested.

J (5) In regard to sales the Judges recommend that Section 54 of the Regulation be amended so as to require a registered document for the sale of any immovable property of whatever value as in the cases of gifts of immoveable property and mortgages in this State other than those by deposit of title-deeds.

(6) The definition to be introduced as Section 58 (f) must be adapted so as to be in consonance with Section 59 (2) of the Regulation.

J (7) In Section ~~60~~ the words in brackets in the British Indian Act are unnecessary here.

J (8) In Section 63 A the Judges recommend that it be provided that a mortgagee in possession like a lessee may remove fixtures.

✓ (9) The Chief Justice and Mr. Justice Chari are in favour of introducing a section corresponding with Section 65 A of the British Indian Act. Mr. Justice Shankaranarayana Rao and Mr. Justice Sreenivasa Rao have written separate minutes about this, which are appended to the letter (Appendix A).

(10) The Judges are against the addition of words such as have been added to Section 76 (1) of the British Indian Act as that would prevent a mortgagee remaining in possession in consequence of some not unreasonable dispute from getting credit for really necessary expenditure such as

the payment of public taxes, of which the mortgagor would get the benefit. An instance of the injustice which would result from applying the principle of the British Indian amendment recently came before the Court. So long as the mortgagee has to account for his receipts in such a case and so get credit only for justifiable expenditure, the mortgagor is sufficiently protected.

(11) In regard to Sections 58, 67 and 98 Mr. Justice Sreenivasa Rao has written a minute, of which a copy is appended to the letter (Appendix B).

(12) In regard to Section 67 A Mr. Justice Sreenivasa Rao suggests that it shall come into operation only in respect of suits filed after a certain date.

I am also to add that the Judges are of opinion that it will be desirable to provide carefully and explicitly how far any amendments or additions to the Regulation should have retrospective effect or affect transactions made before the amendments or additions come into force and also to make consequential amendments of other Regulations.

I have the honour to be,
Sir,
Your most obedient servant,

M. S. Srinivasulu
Registrar.

VSM.

APPENDIX A.

MINUTE OF MR. JUSTICE SHANKARANARAYANA RAO:-

SECTION 65 A.

So far as I am aware we have had no trouble in this matter. An addition of this kind may by itself be a sort of a suggestion to some of the impecunious mortgagors to bring into existence leases giving rise to unnecessary litigation.

Moreover, our villagers are mostly ignorant and illiterate and it is often difficult for them to get lease deeds drawn up bearing in mind the various limitations sought to be placed upon his power, without resorting to legal advice, which a poor ryot would surely find it difficult, or at any rate costly to secure. But for this practical difficulty I see no objection.

MINUTE OF MR. JUSTICE SREENIVASA RAO:-

I agree to its introduction, after second consideration, but would suggest with respect that if it is introduced, it might come into operation only in respect of mortgages executed after a sufficiently long date after the passing of the Regulation, so that future mortgagees may provide against complications in the execution of their decrees.

"C o p y"

Shankaranarayana
Registrar.

400. 4 319/233
P

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APPENDIX B.

MINUTES OF MR. JUSTICE SREENIVASA RAO:-

I suggest some amendments in regard to the following:-

SECTIONS 58 (g), 67 - 98.

21 57

I would invite kind reference to the Mysore Select Committee's report of 16th December 1916 under Clause 67 where two kinds of usufructuary mortgages are referred to, (the Bhogya and Ili Bhogya) and the operation of para 3 sub para (a) is confined only to the Ili Bhogya mortgage.

I would therefore respectfully suggest some amendment like the following to enable a Bhogya mortgagee to sue for sale, as he has been doing now - namely, to omit the words "in lieu of interest, or" in Section 58 (d) and to introduce the rest of Sections 58, 67 and 98.

I am agreeable to any other suitable amendment.

"C o p y"

M. S. Narayanaiah
Registrar.

14

VSM.

Section

File No.

Serial No.

Diary No. of letter replied to.....

Do. No. P6372-7/Enc 1.

General and Revenue Secretariat

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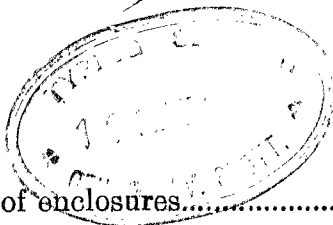
12/5/38

Signed by

Mr. A.S.R.

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Sey.



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To

Dear Sir,

I am pleased to forward herewith copies of the draft reports of the select Committee on the Transfer of Property Bill & the Transfer of Property Supplementary Bill and to request that they may kindly be submitted with your approval at your earliest convenience.

Yours sincerely,

- ✓ 1) Mr. N. Lakshminarasimhan
Esq. B.A., M.A., LL.B.
✓ 2) Mr. R. Venkataswamy Esq.
M.A.

13) Rajasabhatta Sharma
Dewan Bhatnagar
Mr K. R. Srinivasan Esqy M.A.

14) Zibur Gummamangur
Esqy B. A. & B.L.

15) Rajacharitam Sarda
Rao Sahib M.C. Kanyasulkam Rao
B.A. & B.L.

16) P. Subbaramachetty Esq

GENERAL AND REVENUE SECRETARIAT

Bangalore, Dated, 11th May 1938.

D. O. No. *P6372-7/Euc!*

Dear Sir,

GENERAL SECRETARY
12 MAY 1938

I am desirous to forward, herewith, the copies of the draft reports of the Select Committee on the Transfer of Property Bill and the Transfer of Property Supplementary Bill and to request that they may kindly be returned with your approval at your earliest convenience.

Yours sincerely,

Abundant

*Returned to
me
12/5*

M. Venkatesa Iyengar, Esq., M.A.,

BILL TO AMEND THE TRANSFER OF PROPERTY ACT
FOR CERTAIN PURPOSES.

Report of the Select Committee on the Bill
to amend the Transfer of Property Act for
certain purposes.

We, the undersigned members of the Select Committee to which the Bill to amend the Transfer of Property Act for certain purposes was referred, have considered the Bill and have now the honour to submit this our Report.

2. Clause 16. The definition of "Bank" given in the Explanation to clause (f) proposed to be added is not wide enough to include Banks like the Imperial Bank of India which are constituted by Statutes, Charter or Letters Patent. The Law of mortgage by deposit of title deeds must be made available to such banks also if their branches are opened here. Therefore, for the explanation to clause (f) of Section 50, the following may be substituted:-

"Explanation.- "Bank" in this clause means an association or company formed principally for the purpose of engaging on the business of banking and registered under the provisions of the law relating to Companies for the time being in force in Mysore, or in the United Kingdom or in any of the Colonies or Dependencies thereof, or in British India or in any other Indian States which may be notified by the Government in the official Gazette in this behalf or incorporated by an Act of Parliament or of the Central Legislature or of a Provincial Legislature in India or by Royal Charter or Letters Patent."

3. Clause 28. Sub Clause (c) may be altered as follows:-

(c) In clause (a) for the words "a simple mortgagee as such" the following words shall be substituted, viz., "any mortgagee, other than a mortgagee by conditional sale or a mortgagee under an anomalous mortgage by the terms of which he is entitled to foreclose."

As the changes are not material, the Bill need not be republished.

hu
M5

THE TRANSFER OF PROPERTY (AMENDMENT)

SUPPLEMENTARY BILL.

Report of the Select Committee on the
Transfer of Property (Amendment) Supplementary
Bill.

We, the members of the Select Committee appointed to consider the Transfer of Property (Amendment) Supplementary Bill, have considered the Bill and have now the honour to submit this our Report.

2. We are of opinion that no change is necessary. The measure introduces amendments which are consequential on the Transfer of Property Amendment Bill.

3. As no change is recommended, the Bill need not be re-published.

W
14/

RAJASABHABHUSHANA, DIWAN BAHADUR
K. R. SRINIVASIENGAR
RETIRED MEMBER OF COUNCIL

FIFTH ROAD, CHAMARAJAPET

Bangalore City, 13/5/28

Dear Sir

I have with return with my
signature in token of approval. The
draft report of the Select Committee on
the Transfer of Property Bill and the Transfer
of Property Supplementary Bill sent to
you with your No 16072-2 of 11/12 is

Yours truly
K. R. Srinivasiengar

The Secretary to the Legislative Council
Bangalore

BILL TO AMEND THE TRANSFER OF PROPERTY ACT
FOR CERTAIN PURPOSES.

Report of the Select Committee on the Bill
to amend the Transfer of Property Act for
certain purposes.

We, the undersigned members of the Select Committee to which the Bill to amend the Transfer of Property Act for certain purposes was referred, have considered the Bill and have now the honour to submit this our Report.

2. Clause 16. The definition of "Bank" given in the Explanation to clause (f) proposed to be added is not wide enough to include Banks like the Imperial Bank of India which are constituted by Statutes, Charter or Letters Patent. The Law of mortgage by deposit of title deeds must be made available to such banks also if their branches are opened here. Therefore, for the explanation to clause (f) of Section 58, the following may be substituted:-

"Explanation.- "Bank" in this clause means an association or company formed principally for the purpose of engaging on the business of banking and registered under the provisions of the law relating to Companies for the time being in force in Mysore, or in the United Kingdom or in any of the Colonies or Dependencies thereof, or in British India or in any other Indian States which may be notified by the Government in the official Gazette in this behalf or incorporated by an Act of Parliament or of the Central Legislature or of a Provincial Legislature in India or by Royal Charter or Letters Patent."

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As the changes are not material, the Bill need not be republished.


12/5

17

THE TRANSFER OF PROPERTY (AMENDMENT)
SUPPLEMENTARY BILL.

Report of the Select Committee on the
Transfer of Property (Amendment) Supplementary
Bill.

We, the members of the Select Committee appointed to consider the Transfer of Property (Amendment) Supplementary Bill, have considered the Bill and have now the honour to submit this our Report.

2. We are of opinion that no change is necessary. The measure introduces amendments which are consequential on the Transfer of Property Amendment Bill.

3. As no change is recommended, the Bill need not be re-published.

Ag. -
13/5

D. O. No.

796
Encl. 2

6583/p837

GOVERNMENT ADVOCATE'S CHAMBERS,

PUBLIC OFFICES,

Bangalore, ...13th...May.....1938.

Dear Sir,

I am returning herewith, duly approved,
the copies of the Draft Reports of the Select
Committee on the Transfer of Property Bill and
the Transfer of Property Supplementary Bill,
received with your letter no. P.6372-7 dated
the 11th/12th May 1938.

Yours sincerely,

M. K. M. S.
Munimappa

A. Sundararaja Rao, Esq., B.A., B.L.,
Under Secretary to Government,
BANGALORE.

19

BILL TO AMEND THE TRANSFER OF PROPERTY ACT
FOR CERTAIN PURPOSES.

Report of the Select Committee on the Bill to amend the Transfer of Property Act for certain purposes.

We, the undersigned members of the Select Committee to which the Bill to amend the Transfer of Property Act for certain purposes was referred, have considered the Bill and have now the honour to submit this our Report.

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"Explanation.- "Bank" in this clause means an association or company formed principally for the purpose of engaging on the business of banking and registered under the provision of the law relating to Companies for the time being in force in Mysore, or in the United Kingdom or in any of the Colonies or Dependencies thereof, or in British India or in any other Indian States which may be notified by the Government in the official Gazette in this behalf or incorporated by an Act of Parliament or of the Central Legislature or of a Provincial Legislature in India or by Royal Charter or Letters Patent."

3. Clause 28. Sub Clause (c) may be altered as follows:-

(c) In clause (a) for the words "a simple mortgagee as such" the following words shall be substituted, viz., "any mortgagee, other than a mortgagee by conditional sale or a mortgagee under an anomalous mortgage by the terms of which he is entitled to foreclose."

As the changes are not material, the Bill need not be republished.

Approved

Mortendasham: Ramappa
13-8-38

THE TRANSFER OF PROPERTY (AMENDMENT)
SUPPLEMENTARY BILL.

Report of the Select Committee on the
Transfer of Property (Amendment) Supplementary
Bill.

We, the members of the Select Committee appointed to consider the Transfer of Property (Amendment) Supplementary Bill, have considered the Bill and have now the honour to submit this our Report.

2. We are of opinion that no change is necessary. The measure introduces amendments which are consequential on the Transfer of Property Amendment Bill.

3. As no change is recommended, the Bill need not be re-published.

Approved

M. Venkataswami
Narasappa

6623/837
P 837

Prot. B.

RECEIVED
LEGISLATIVE COUNCIL
BANGALORE

Bangalore City,
13th May 1938

To
The Secretary,
R.A. & Legislative Council,
B A N G A L O R E

Dear Sir,

With reference to your letter No. P6372-7
dated 11/12th May 1938 I return herewith Select
Committee Reports on the T.P. Bill and T.P. Supple-
mentary Bill duly approved, as desired.

Yours sincerely,

C. Ravindra Rao

Encls: 2

Report of the Select Committee on the Bill
to amend the Transfer of Property Act for
certain purposes.

We, the undersigned members of the
Select Committee to which the Bill to amend
the Transfer of Property Act for certain
purposes was referred, have considered the
Bill and have now the honour to submit this
our Report.

2. Clause 16. The definition of "Bank"
given in the Explanation to clause (f) pro-
posed to be added is not wide enough to
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India which are constituted by Statutes,
Charter or Letters Patent. The Law of
mortgage by deposit of title deeds must be
made available to such banks also if their
branches are opened here. Therefore, for
the explanation to clause (f) of Section 58,
the following may be substituted:-

"Explanation.- "Bank" in this clause means
an association or company formed principally
for the purpose of engaging on the business
of banking and registered under the provisions
of the law relating to Companies for the time
being in force in Mysore, or in the United
Kingdom or in any of the Colonies or Dependen-
cies thereof, or in British India or in any
other Indian States which may be notified by the
Government in the official Gazette in this
behalf or incorporated by an Act of Parliament
or of the Central Legislature or of a
Provincial Legislature in India or by Royal
Charter or Letters Patent."

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(c) In clause (a) for the words "a simple mortgagee as such" the following words shall be substituted, viz., "any mortgagee, other than a mortgagee by conditional sale or a mortgagee under an anomalous mortgage by the terms of which he is entitled to foreclose."

As the changes are not material, the Bill need not be republished.

C. Annadana Rao

THE TRANSFER OF PROPERTY (AMENDMENT)

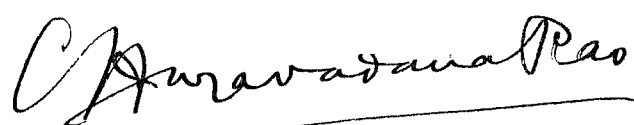
SUPPLEMENTARY BILL.

Report of the Select Committee on the
Transfer of Property (Amendment) Supplementary
Bill.

We, the members of the Select Committee appointed to consider the Transfer of Property (Amendment) Supplementary Bill, have considered the Bill and have now the honour to submit this our Report.

2. We are of opinion that no change is necessary. The measure introduces amendments which are consequential on the Transfer of Property Amendment Bill.

3. As no change is recommended, the Bill need not be re-published.


C. Aravindan Rao

P. SUBBARAMA CHETTY, M.L.C.
PRESIDENT, THE MYSORE CHAMBER OF COMMERCE.
DIRECTOR, THE BANK OF MYSORE LTD.

CHICKPET, 26
Bangalore City 24th May '38.

To

The Secretary,
Legislative Council
G. R. S.,
Bangalore.

Dear Sir,

With reference to your
letter No. 76372/Encl. 1 of 12 May '38

I am returning herewith the
Draft reports of the Select-
Committee on the Transfer of
Property Bill & the Transfer of
Property Supplementary Bill,
which are duly approved.
Please acknowledge receipt.

Encl. 1

Yours faithfully,
P. Subbaram
Clk

BILL TO AMEND THE TRANSFER OF PROPERTY ACT
FOR CERTAIN PURPOSES.

Report of the Select Committee on the Bill
to amend the Transfer of Property Act for
certain purposes.

We, the undersigned members of the Select Committee to which the Bill to amend the Transfer of Property Act for certain purposes was referred, have considered the Bill and have now the honour to submit this our Report.

2. Clause 16. The definition of "Bank" given in the Explanation to clause (f) proposed to be added is not wide enough to include Banks like the Imperial Bank of India which are constituted by Statutes, Charter or Letters Patent. The Law of mortgage by deposit of title deeds must be made available to such banks also if their branches are opened here. Therefore, for the explanation to clause (f) of Section 58, the following may be substituted:-

"Explanation.- "Bank" in this clause means an association or company formed principally for the purpose of engaging on the business of banking and registered under the provisions of the law relating to Companies for the time being in force in Mysore, or in the United Kingdom or in any of the Colonies or Dependancies thereof, or in British India or in any other Indian States which may be notified by the Government in the official Gazette in this behalf or incorporated by an Act of Parliament or of the Central Legislature or of a Provincial Legislature in India or by Royal Charter or Letters Patent."

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(c) In clause (a) for the words "a simple mortgagee as such" the following words shall be substituted, viz., "any mortgagee, other than a mortgagee by conditional sale or a mortgagee under an anomalous mortgage by the terms of which he is entitled to foreclose."

As the changes are not material, the Bill need not be republished.

approved
P. G. Bhandarkar

THE TRANSFER OF PROPERTY (AMENDMENT)
SUPPLEMENTARY BILL.

Report of the Select Committee on the
Transfer of Property (Amendment) Supplementary
Bill.

We, the members of the Select Committee appointed to consider the Transfer of Property (Amendment) Supplementary Bill, have considered the Bill and have now the honour to submit this our Report.

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3. As no change is recommended, the Bill need not be re-published.

Approved. P. G. Baranov
Chetty

SUBJECT.....

Diary No. of letter replied to.....

GENERAL AND REVENUE SECRETARIAT,

, the.....191 .

Date of issue.....20-7-38

Signed by.....Mr. A. S. R.

May this be—

(i) Printed?

(ii) Treated as a standing order?

(iii) Published in the "Gazette" English part?

(iv) Translated?

(v) Placed at the disposal of the Press?

(vi) Published in the "Gazette" Kannada part?

Section.....

File No. 8-38

Serial No. 1

Proceedings of the Government of
H. H. the Maharaja of Mysore.

Order No. P454/Enc. 2

Ordered that the accompanying.....acts to
amend the Transfer
Properties set and to
Supplement that Act
which received the assent of His High-
ness the Maharaja, on the.....th day of
July.....1938,
be published as Regulation No. XVI and XVII
of 1938, in the Mysore Gazette for gene-
ral information.

For Secretary to Government.

To

The Compiler, Mysore Gazette, for
publication in Part III of the Gazette, in
English and Kannada and for supply of
.....spare copies in English, and
.....spare copies in Kannada to
this office, and.....spare copies
in English and.....spare copies
in Kannada to the Curator, Government
Central Book Depot, Bangalore. Proofs
should be sent to this office for approval
before publication.

Copy to translation

11/11/38

31.

As finally passed

TO AMEND THE TRANSFER OF PRO-
PERTY ACT FOR CERTAIN PURPOSES.

(~~AS AMENDED BY THE SELECT COMMITTEE.~~)

[Portions omitted are enclosed in square brackets and additions are indicated in italics.]

**Bill to amend the Transfer of Property Act for
certain purposes.**

(As amended by the Select Committee.)

Whereas it is expedient to amend the Transfer of Property Act, 1918, for the purposes hereinafter appearing ; It is hereby enacted as follows :—

Short title and
commence-
ment.

1. (1) This Act may be called the Transfer of Property (Amendment) Act, 1938.

(2) It shall come into force on the first day of *January 1939*

Amendment
of Section 3.

2. In section 3 of the Transfer of Property Act (hereinafter referred to as the said Act), for the last paragraph containing the definition of "notice," the following shall be substituted, namely :—

"a person is said to have notice" of a fact when he actually knows that fact, or when, but for wilful abstention from an inquiry or search which he ought to have made, or gross negligence, he would have known it.

Explanation I.—Where any transaction relating to immovable property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part of or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration or, if the instrument has been registered under sub-section (2) of section 30 of the Mysore Registration Act, 1903, from the earliest date on which a memorandum thereof has been filed by any Sub-Registrar under section 66 of that Act :

Provided that—

(1) the instrument has been registered and its registration completed in the manner prescribed by the Mysore Registration Act, 1903, and the rules made thereunder,

(2) the instrument has been duly entered or filed, as the case may be, in the books kept under section 51 of that Act, and

(3) the particulars regarding the transaction to which the instrument relates have been correctly entered in the indexes kept under section 55 of that Act.

Explanation II.—Any person acquiring any immovable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof.

Explanation III.—A person shall be deemed to have had notice of any fact if his agent acquires notice thereof whilst acting on his behalf in the course of business to which that fact is material :

Provided that, if the agent fraudulently conceals the fact, the principal shall not be charged with notice thereof as against any person who was a party to or otherwise cognizant of the fraud."

Amendment
of section 5.

3. In section 5 of the said Act, after the words "or to himself" the words "or to himself" shall be inserted; and to the same section the following paragraph shall be added, namely :

"In this section 'living person' includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals."

Amendment
of section 6.

4. In section 6 of the said Act, after clause (d) the following clause shall be inserted, namely :—

"(dd) A right to future maintenance, in whatsoever manner arising, secured or determined, cannot be transferred."

Amendment
of section 11.

5. For the second paragraph of section 11 of the said Act, beginning with the words "nothing in this section" and ending with the words "in a particular manner" the following shall be substituted, namely :—

"Where any such direction has been made in respect of one piece of immovable property for the purpose of securing the beneficial enjoyment of another piece of such property, nothing in this section shall be deemed to affect any right which the transferor may have to enforce such direction or any remedy which he may have in respect of a breach thereof."

Amendment
of section 15.

6. In section 15 of the said Act, for the words "as regards the whole class," the following words shall be substituted, namely :—

“in regard to those persons only and not in regard to the whole class.”

7. For sections 16, 17 and 18 of the said Act, the following sections shall be substituted, namely:—

Substitution of new sections for sections 16, 17 and 18.

“16. Where by reason of any of the rules contained in sections 13 and 14, an interest created for the benefit of a person or of a class of persons fails in regard to such person or the whole of such class, any interest created in the same transaction and intended to take effect after or upon failure of such prior interest also fails.

Transfer to take effect on failure of prior interest.

“17. (1) Where the terms of a transfer of property direct that the income arising from the property shall be accumulated either wholly or in part during a period longer than—

Direction for accumulation.

(a) the life of the transferor, or

(b) a period of eighteen years from the date of the transfer,

such direction shall, save as hereinafter provided, be void to the extent to which the period during which the accumulation is directed exceeds the longer of the aforesaid periods, and at the end of such last-mentioned period the property and the income thereof shall be disposed of as if the period during which the accumulation has been directed to be made had elapsed.

(2) This section shall not affect any direction for accumulation for the purpose of—

(i) the payment of the debts of the transferor or any other person taking any interest under the transfer, or

(ii) the provision of portions for children or remoter issue of the transferor or of any other person taking any interest under the transfer, or

(iii) the preservation or maintenance of the property transferred;

and such direction may be made accordingly.

“18. The restrictions in sections 14, 16 and 17 shall not apply in the case of a transfer of property for the benefit of the public in the advancement of religion, knowledge, commerce, health, safety, or any other object beneficial to mankind.”

Transfer in perpetuity for benefit of public.

Amendment
of section 39.

8. In section 39 of the said Act—

(a) the words “with the intention of defeating such right” shall be omitted, and for the words “of such intention” the word “thereof” shall be substituted and

(b) the *illustration* shall be omitted.

Amendment
of section 40.

9. In section 40 of the said Act for the words “of the latter property or to compel its enjoyment in a particular manner,” the words “in a particular manner of the latter property” shall be substituted.

Amendment
of section 43.

10. In section 43 of the said Act, after the word “person” the words “fraudulently or” shall be inserted.

Amendment
of section 52.

11. (1) In section 52 of the said Act—

(a) for the words “active prosecution” the word “pendency” shall be substituted;

(b) for the words “a contentious” the word “any” shall be substituted; and

(c) after the words “suit or proceeding,” where they occur for the first time, the words “which is not collusive and” shall be inserted.

(2) To the same section the following *Explanation* shall be added, namely :—

“*Explanation.*—For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.”

Substitution
of new section
for section 53.

12. For section 53 of the said Act, the following section shall be substituted, namely :—

Fraudulent
transfer.

“53. (1) Every transfer of immovable property made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed.

Nothing in this sub-section shall impair the rights of a transferee in good faith and for consideration.

Nothing in this sub-section shall affect any law for the time being in force relating to insolvency.

A suit instituted by a creditor (which term includes a decree-holder whether he has or has not applied for execution of his decree) to avoid a transfer on the ground that it has been made with intent to defeat or delay the creditors of the transferor, shall be instituted on behalf of, or for the benefit of, all the creditors.

(2) Every transfer of immovable property made without consideration with intent to defraud a subsequent transferee shall be voidable at the option of such transferee.

For the purposes of this sub-section, no transfer made without consideration shall be deemed to have been made with intent to defraud by reason only that a subsequent transfer for consideration was made."

13. After section 53 of the said Act, the following section shall be inserted, namely :—

Insertion of
new section
53-A.

"53-A. Where any person contracts to transfer for consideration any immovable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty,

Part
Performance.

and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract,

and the transferee has performed or is willing to perform his part of the contract,

then, notwithstanding that the contract, though required to be registered, has not been registered, or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract;

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof."

Amendment
of section 55.

14. In section 55 of the said Act—

(a) in sub-clause (a) of clause (1), after the word “property” the words “or in the seller’s title thereto” shall be inserted;

(b) in sub-clause (b) of clause (4), after the word “buyer,” where it occurs for the second time, the words “any transferee without consideration or any transferee with notice of the non-payment,” shall be inserted; and after the words “on such amount or part” the words from the date on which possession has been delivered” shall be added; and

(c) in sub-clause (b) of clause (6), the words “with notice of the payment” shall be omitted.

Substitution
of new section
for section 56.

Marshalling
by subsequent
purchaser.

15. For section 56 of the said Act, the following shall be substituted, namely :—

“56. If the owner of two or more properties mortgages them to one person and then sells one or more of the properties to another person, the buyer is, in the absence of a contract to the contrary, entitled to have the mortgage-debt satisfied out of the property or properties not sold to him, so far as the same will extend, but not so far as to prejudice the rights of the mortgagee or persons claiming under him or of any other person who has for consideration acquired an interest in any of the properties.”

Amendment
of section 58.

16. In section 58 of the said Act, (a) to clause (c) the following proviso shall be added, namely :—

“Provided that no such transaction shall be deemed to be a mortgage, unless the condition is embodied in the document which effects or purports to effect the sale;”

(b) in clause (d)—

(i) after the words “Where the mortgagor delivers possession” the words “or expressly or by implication binds himself to deliver possession” shall be inserted;

(ii) for the words “and to appropriate them” the words “or any part of such rents and profits and to appropriate the same” shall be substituted; and

(iii) after the words “or partly in lieu of interest,” for the word “and” the word “or” shall be substituted; and

(c) after clause (e) the following clauses shall be added, namely :—

- “(f) The transaction is called a mortgage by deposit of title deeds where a person, in any area to which this provision may be extended by the Government by notification in the Official Gazette, delivers to a Bank or its authorized agent documents of title relating to immovable property with intent to create a security thereon and accompanied by a memorandum in writing signed by the debtor specifying such property and the amount of credit given or agreed to be given by the Bank on the security of such property, provided that a copy of such memorandum under the seal of the Bank and the signature of its authorised agent is delivered or transmitted by registered post within ten days of the delivery to the bank as aforesaid of the memorandum, to every registering officer within whose district or sub-district the whole or any portion of such property is situated, or where a special registering officer is appointed or designated by Government in this behalf, to such registering officer and such registering officer shall thereupon file the copy in his Book No. 1.

~~[Explanation.—“Bank” in this clause means an association or company with limited liability formed principally for the purpose of engaging on the business of banking and registered under the provisions of the law relating to companies for the time being in force in Mysore or in British India or in any other Indian State which may be notified by the Government in the Official Gazette in this behalf.]~~

“**Explanation.**—‘Bank’ in this clause means an association or company formed principally for the purpose of engaging on the business of banking and registered under the provisions of the law relating to Companies for the time being in force in Mysore, or in the United Kingdom or in any of the Colonies or Dependencies thereof, or in British India or in any other Indian States which may be notified by the Government in the Official Gazette in this behalf or incorporated by an Act of Parliament or of the Central Legislature or of a Provincial Legislature in India or by Royal Charter or Letters Patent.”

(g) A mortgage which is not a simple mortgage, a mortgage by conditional sale, an usufructuary mortgage, an English mortgage or a mortgage by deposit of title-deeds within the meaning of this section is called an anomalous mortgage."

Amendment
of section 59.

17. In section 59 of the said Act—

(a) after the words "a mortgage" the words "other than a mortgage by deposit of title deeds" shall be inserted and

(b) the second paragraph and the *Explanation* shall be omitted.

Insertion of
new section
59-A.

18. After section 59 of the said Act, the following section shall be inserted, namely:—

References to
mortgagors
and mort-
gagees to
include per-
sons deriving
title from
them.

"59-A. Unless otherwise expressly provided, reference in this Chapter to mortgagors and mortgagees shall be deemed to include references to persons deriving title from them respectively."

Amendment
of section 60.

19. In section 60 of the said Act,

(a) for the word "payable" the word "due" shall be substituted;

(b) for the words "the mortgage-deed, if any, to the mortgagor" the following words shall be substituted, namely:—

"to the mortgagor the mortgage-deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee;"

(c) for the word "order" the word "decree" shall be substituted; and

(d) after the words "remaining due on the mortgage, except" the word "only" shall be inserted.

Insertion of
new sections
60-A and 60-B.

20. After section 60 of the said Act, the following sections shall be inserted, namely:—

Obligation to
transfer to
third party
instead of re-
transference
to mortgagor.

"60-A. (1) Where a mortgagor is entitled to redemption, then, on the fulfilment of any conditions on the fulfilment of which he would be entitled to require a re-transfer, he may require the mortgagee, instead of re-transferring the property, to assign the mortgage-debt and transfer the mortgaged property to such third person as the mortgagor may direct; and the mortgagee shall be bound to assign and transfer accordingly.

(2) The rights conferred by this section belong to and may be enforced by the mortgagor or by any encumbrancer notwithstanding an intermediate encumbrance

but the requisition of any encumbrancer shall prevail over a requisition of the mortgagor and, as between encumbrancers the requisition of a prior encumbrancer shall prevail over that of a subsequent encumbrancer.

(3) The provisions of this section do not apply in the case of a mortgagee who is or has been in possession.

60-B. A mortgagor, as long as his right of redemption subsists, shall be entitled at all reasonable times, at his request and at his own cost and on payment of the mortgagee's costs and expenses in this behalf, to inspect and make copies or abstracts of, or extracts from, documents of title relating to the mortgaged property which are in the custody or power of the mortgagee."

Right to inspection and production of documents.

21. For section 61 of the said Act the following section shall be substituted, namely:—

Substitution of new section for section 61.

"61. A mortgagor who has executed two or more mortgages in favour of the same mortgagee shall, in the absence of a contract to the contrary when the principal money of any two or more of the mortgages has become due, be entitled to redeem any one such mortgage separately, or any two or more of such mortgages together."

Right to redeem separately or simultaneously.

22. In section 62 of the said Act—

Amendment of section 62.

(a) after the word "property," where it first occurs, the words "together with the mortgage deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee" shall be inserted;

(b) for the words "the interest of the principal money" the words "or any part thereof a part only of the mortgage money," shall be substituted; and

(c) for the words "the principal money" where they occur for the second time, the words "the mortgage-money or the balance thereof" shall be substituted.

23. In section 63 of the said Act for the words "at the same rate of interests" the words "with interest at the same rate as is payable on the principal, or where no such rate is fixed at the rate of nine per cent per annum" shall be substituted.

Amendment of section 63.

24. After section 63 of the said Act, the following section shall be inserted, namely:—

"63-A. (1) Where mortgaged property in possession of the mortgagee has, during the continuance of the mortgage, been improved, the mortgagor, upon redemption,

Insertion of new section 63-A.
Improvements to mortgaged property.

shall, in the absence of a contract to the contrary, be entitled to the improvement; and the mortgagor shall not, save only in cases provided for in sub-section (2), be liable to pay the cost thereof.

(2) Where any such improvement was effected at the cost of the mortgagee and was necessary to preserve the property from destruction or deterioration or was necessary to prevent the security from becoming insufficient, or was made in compliance with the lawful order of any public servant or public authority, the mortgagor shall, in the absence of a contract to the contrary, be liable to pay the proper cost thereof as an addition to the principal money with interest at the same rate as is payable on the principal, or where no such rate is fixed, at the rate of nine per cent per annum, and the profits, if any, accruing by reason of the improvement shall be credited to the mortgagor.

(3) Notwithstanding anything in sub-section (1) a mortgagee may remove at any time whilst he is in possession of the property mortgaged, but not afterwards, all things which he has attached to the earth, provided he leaves the property in the state in which he received it."

Amendment
of section 64.

25. In section 64 of the said Act, the words "for a term of years" shall be omitted.

Amendment
of section 65.

26. In section 65 of the said Act.

(a) in clause (d), the words "for a term of years" shall be omitted; and

(b) the words "Nothing in clause (c), or in clause (d), so far as it relates to the payment of future rent, applies in the case of an usufructuary mortgage" shall be omitted.

Insertion of
new section
65 A.

Mortgagor's
power to
lease.

27. After section 65 of the said Act, the following section shall be inserted, namely:—

65-A. (1) Subject to the provisions of sub-section (2) a mortgagor, while lawfully in possession of the mortgaged property, shall have power to make leases thereof which shall be binding on the mortgagee.

(2) (a) Every such lease shall be such as would be made in the ordinary course of management of the property concerned, and in accordance with any local law, custom or usage.

(b) Every such lease shall reserve the best rent that can reasonably be obtained, and no premium shall be paid or promised and no rent shall be payable in advance.

(c) No such lease shall contain a covenant for renewal.

(d) Every such lease shall take effect from a date not later than six months from the date on which it is made.

(e) In the case of a lease of buildings, whether leased with or without the land on which they stand, the duration of the lease shall in no case exceed three years and the lease shall contain a covenant for payment of the rent and a condition of re-entry on the rent not being paid within a time therein specified.

(3) The provisions of sub-section (1) apply only if and as far as a contrary intention is not expressed in the mortgage-deed; and the provisions of sub-section (2) may be varied or extended by the mortgage-deed, and as so varied and extended, shall, as far as may be, operate in like manner and with all like incidents, effects and consequences, as if such variations or extensions were contained in that sub-section."

28. In section 67 of the said Act,—

Amendment
of section 67

(a) for the word "payable" the word "due" shall be substituted;

(b) for the words "an order," wherever they occur, the words "a decree" shall be substituted; and

[(c) for clause (a) the following clause shall be substituted, namely:—

~~"(a) to authorize any mortgagee, other than a mortgagee by conditional sale or a mortgagee under an anomalous mortgage by the terms of which he is entitled to foreclose, to institute a suit for foreclosure, or an usufructuary mortgagee as such, where he is authorized to appropriate the rents and profits or any part of such grants and profits in payment of the principal money or partly in lieu of interest or partly in payment of the principal money, or a mortgagee by conditional sale as such to institute a suit for sale; or."]~~

(c) In clause (a) for the words "a simple mortgage as such" the following words shall be substituted, *viz.*, "any mortgagee, other than a mortgagee by conditional sale or a mortgagee under an anomalous mortgage by the terms of which he is entitled to foreclose".

29. After section 67 of the said Act the following section shall be inserted, namely:—

Insertion of
new section
67A.

"67-A. A mortgagee who holds two or more mortgages executed by the same mortgagor in respect of each of which he has a right to obtain the same kind of

Mortgagee
when bound
to bring one
suit on several
mortgages

decree under section 67, and who sues to obtain such decree on any one of the mortgages, shall, in the absence of a contract to the contrary, be bound to sue on all the mortgages in respect of which the mortgage-money has become due."

Substitution
of new section
for section 68.
Right to sue
for mortgage
money.

30. For section 68 of the said Act, the following section shall be substituted, namely:—

"68. (1) The mortgagee has a right to sue for the mortgage money in the following cases and no others, namely:—

- (a) where the mortgagor binds himself to repay the same;
- (b) where, by any cause other than the wrongful act or default of the mortgagor or mortgagee, the mortgaged property is wholly or partially destroyed or the security is rendered insufficient within the meaning of section 66, and the mortgagee has given the mortgagor a reasonable opportunity of providing further security enough to render the whole security sufficient and the mortgagor has failed to do so;
- (c) where the mortgagee is deprived of the whole or part of his security by or in consequence of the wrongful act or default of the mortgagor;
- (d) where, the mortgagee being entitled to possession of the mortgaged property, the mortgagor fails to deliver the same to him, or to secure the possession thereof to him without disturbance by the mortgagor or any person claiming under a title superior to that of the mortgagor.

Provided that, in the case referred to in clause (a), a transferee from the mortgagor or from his legal representative shall not be liable to be sued for the mortgage-money.

(2) Where a suit is brought under clause (a) or clause (b) of sub-section (1), the Court may, at its discretion, stay the suit and all proceedings therein, notwithstanding any contract to the contrary, until the mortgagee has exhausted all his available remedies against the mortgaged property or what remains of it, unless the mortgagee abandons his security and, if necessary, re-transfers the mortgaged property."

Amendment
of section 71.

31. In section 71 of the said Act, the words "for a term of years" shall be omitted.

32. In section 72 of the said Act :—

Amendment
of section 72.

(a) for the words "When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property, he" the words "A mortgagee" shall be substituted.

(b) clause (a) shall be omitted ;

(c) in clause (b), for the words "its preservation" the words "the preservation of the mortgaged property" shall be substituted ;

(d) after the words "nine per cent per annum," the following Proviso shall be inserted, namely :—

"Provided that the expenditure of money by the mortgagee under clause (b) or clause (c) shall not be deemed to be necessary unless the mortgagor has been called upon and has failed to take proper and timely steps to preserve the property or to support the title." and

(e) for the words "a charge on the mortgaged property, in addition to the principal money, with the same priority and with interest at the same rate" the following shall be substituted, namely :—

"added to the principal money with interest at the same rate as is payable on the principal money, or, where no such rate is fixed, at the rate of nine per cent, per annum."

33. For section 73 of the said Act, the following section shall be substituted, namely :—

Substitution
of new section
for section 73.

"73. (1) Where the mortgaged property or any part thereof or any interest therein is sold owing to failure to pay arrears of revenue or other charges of a public nature or rent due in respect of such property, and such failure did not arise from any default of the mortgagee, the mortgagee shall be entitled to claim payment of the mortgage-money, in whole or in part, out of any surplus of the sale proceeds remaining after payment of the arrears and of all charges and deductions directed by law.

(2) Where the mortgaged property or any part thereof or any interest therein is acquired under the Land Acquisition Act, 1894, or any other enactment for the time being in force providing for the compulsory acquisition of immovable property, the mortgagee shall be entitled to claim payment of the mortgage-money, in whole or in part, out of the amount due to the mortgagor as compensation,

(3) Such claims shall prevail against all other claim except those of prior encumbrances, and may be enforced notwithstanding that the principal money on the mortgage has not become due.

Omission of
sections 74
and 75.
Amendment
of section 76

34. Section 74 and section 75 of the said Act shall be omitted.

35. In section 76 of the said Act :—

- (a) in clause (c), after the words “charges of public nature” the words “and all rent” shall be inserted;
- (b) in clause (h), after the words “deducting the expenses” the words “properly incurred for the management of the property and the collection of rents and profits and the other expenses” shall be inserted, and the words “on the principal-money” shall be omitted, and
- (c) in clause (i), the word “gross” shall be omitted.

Omission of
section 80.

36. Section 80 of the said Act shall be omitted.

Substitution
of new section
for section 81.

37. For sub-section (i) of section 81 of the said Act, the following section shall be substituted, namely :—

“81. (1) If the owner of two or more properties mortgages them to one person and then mortgages one or more of the properties to another person, the subsequent mortgagee is, in the absence of a contract to the contrary, entitled to have the prior mortgage-debt satisfied out of the property or properties not mortgaged to him, so far as the same will extend, but not so as to prejudice the rights of the prior mortgagee or of any other person who has for consideration acquired an interest in any of the properties.”

Amendment
of section 82.

38. In section 82 of the said Act :—

- (a) for the first paragraph beginning with the words “Where several properties,” and ending with the words “date of the mortgage” the following shall be substituted, namely :—

“Where property subject to a mortgage belongs to two or more persons having distinct and separate rights of ownership therein, the different shares in or parts of such property owned by such persons are, in the absence of a contract to the contrary, liable to contribute rateably to the debt secured by the mortgage, and, for the purpose of determining the rate at which each such share or part

shall contribute, the value thereof shall be deemed to be its value at the date of the mortgage after deduction of the amount of any other mortgage or charge to which it may have been subject on that date" and

- (b) in the third paragraph, for the word "second" the word "subsequent" shall be substituted.

39. In section 83 of the said Act :—

Amendment
of section 83.

- (a) for the words "has become payable" the words "payable in respect of any mortgage has become due" shall be substituted ;
- (b) for the words "if then in his possession or power" the words "and all documents in his possession or power relating to the mortgaged property" shall be substituted ;
- (c) after the word "mortgage-deed," where it occurs for the second time, the words "and all such other documents" shall be inserted ; and
- (d) the following paragraph shall be added after the words "such other person as aforesaid," namely :—

"Where the mortgagee is in possession of the mortgaged property, the Court shall, before paying to him the amount so deposited, direct him to deliver possession thereof to the mortgagor and at the cost of the mortgagor either to retransfer the mortgaged property to the mortgagor or to such third person as the mortgagor may direct or to execute and (where the mortgage has been effected by a registered instrument) have registered an acknowledgment in writing that any right in derogation of the mortgagor's interest transferred to the mortgagee has been extinguished."

40. In section 84 of the said Act :—

Amendment
of section 84.

- (a) after the words "from the date of the tender or" the words "in a case of a deposit, where no previous tender of such amount has been made," shall be inserted ;
- (b) for the words "as the case may be" the following shall be substituted, namely :—

"and the notice required by section 83 has been served on the mortgagee :

"Provided that, where the mortgagor has deposited such amount without having made a previous tender thereof and has subsequently withdrawn the same or any

part thereof interest on the principal money shall be payable from the date of such withdrawal ;” and

- (c) after the words “tender of the mortgage money” the words “and such notice has not been given before the making of the tender or deposit, as the case may be” shall be added.

Substitution
of new section
for section 91.

41. For section 91 of the said Act the following section shall be substituted, namely :—

Persons who
may sue for
redemption.

“91. Besides the mortgagor, any of the following persons may redeem, or institute a suit for redemption of, the mortgaged property, namely :—

- (a) any person (other than the mortgagee of the interest sought to be redeemed) who has any interest in, or charge upon, the property mortgaged or in or upon the right to redeem the same ;
- (b) any surety for the payment of the mortgage-debt or any part thereof ; or
- (c) any creditor of the mortgagor who has in a suit for the administration of his estate obtained a decree for sale of the mortgaged property.”

Insertion of
new sections
92, 93 and 94.
Subrogation.

42. After section 91 of the said Act, the following sections shall be inserted, namely :—

“92. Any of the persons referred to in section 91 (other than the mortgagor) and any co-mortgagor shall, on redeeming property subject to the mortgage, have, so far as regards redemption, foreclosure or sale of such property, the same rights as the mortgagee whose mortgage he redeems may have against the mortgagor or any other mortgagee.

The right conferred by this section is called the right of subrogation, and a person acquiring the same is said to be subrogated to the rights of the mortgagee whose mortgage he redeems.

A person who has advanced to a mortgagor money with which the mortgage has been redeemed shall be subrogated to the rights of the mortgagee whose mortgage has been redeemed, if the mortgagor has by a registered instrument agreed that such persons shall be so subrogated.

Nothing in this section shall be deemed to confer a right of subrogation on any person unless the mortgage

in respect of which the right is claimed has been redeemed in full.

93. No mortgagee paying off a prior mortgage, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his original security; and except in the case provided for by section 79, no mortgagee making a subsequent advance to the mortgagor, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his security for such subsequent advance.

Prohibition of tacking.

94. Where a property is mortgaged for successive debts to successive mortgagees, a mesne mortgagee has the same rights against mortgagees posterior to himself as he has against the mortgagor."

Rights of mesne mortgagee.

43. For section 95 of the said Act the following sections shall be substituted, namely :—

Substitution of new sections for section 95.

"95. Where one of several mortgagors redeems the mortgaged property, he shall, in enforcing his right of subrogation under section 92 against his co-mortgagors, be entitled to add to the mortgage-money recoverable from them such proportion of the expenses properly incurred in such redemption as is attributable to their share in the property.

Right of redeeming co-mortgagor to expenses.

96. The provisions hereinbefore contained which apply to a simple mortgage shall, so far as may be, apply to a mortgage by deposit of title-deeds."

Mortgage by deposit of title-deeds.

44. In section 98 of the said Act, for the words "a mortgage not being a simple mortgage, a mortgage by conditional sale, an usufructuary mortgage or an English mortgage or a combination of the first and third, or the second and third, of such forms," the words "an anomalous mortgage" shall be substituted.

Amendment of section 98.

45. In section 100 of the said Act,

Amendment of section 100.

(a) for the words "as to a mortgagor shall, so far as may be, apply to the owner of such property, and the provisions of sections 81 and 82 shall, so far as may be, apply to the person having such charge" the words "which apply to a simple mortgage shall, so far as may be, apply to such charge," shall be substituted; and

(b) after the words "in the execution of his trust" the following words shall be added, namely :—

"and save as otherwise expressly provided by any law for the time being in force, no charge shall be enforced

against any property in the hands of a person to whom such property has been transferred for consideration and without notice of the charge."

Substitution
of new section
for section
101.

No merger in
case of subse-
quent encum-
brance.

46. For section 101 of the said Act, the following section shall be substituted, namely :—

"101. Any mortgagee of, or person having a charge upon immovable property, or any transferee from such mortgagee or charge-holder, may purchase or otherwise acquire the rights in the property of the mortgagor or owner, as the case may be, without thereby causing the mortgage or charge to be merged as between himself and any subsequent mortgagee of, or person having a subsequent charge upon, the same property; and no such subsequent mortgagee or charge-holder shall be entitled to foreclose or sell such property without redeeming the prior mortgage or charge, or otherwise than subject thereto."

Amendment
of section 102.

47. In section 102 of the said Act,

(a) for the words "Where the person or agent on whom such notice should be served cannot be found in the said district, or is unknown" the words "Where no person or agent on whom such notice should be served can be found or is known," shall be substituted;

(b) after the words "and any notice served in compliance with such direction shall be deemed sufficient" the following proviso shall be inserted, namely :—

"Provided that, in the case of a notice required by section 83, in the case of a deposit, the application shall be made to the court in which the deposit has been made."

(c) for the words "Where the person or agent to whom such tender should be made cannot be found within the said district, or is unknown" the words "Where no person or agent to whom such tender should be made can be found or is known," shall be substituted; and

(d) for the words "in such Court as last aforesaid" the words "in any Court in which a suit might be brought for redemption of the mortgaged property" shall be substituted.

Amendment
of section 106.

48. In section 106 of the said Act, for the words "tendered or delivered either personally to the party who is intended to be bound by it," the following shall be substituted, namely .—

"either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party."

49. In section 107 of the said Act, after the words "by delivery of possession", where they first occur, the following paragraph shall be inserted, namely :—

Amendment
of section 107.

"Where a lease of immovable property is made by a registered instrument, such instrument or, where there are more instruments than one, each such instrument shall be executed by both the lessor and the lessee."

50. In section 108 of the said Act.—

Amendment
of section 108.

(a) in clause (h)

(i) after the words "the lessee may" the words "even after the determination of the lease" shall be inserted; and

(ii) for the words "during the continuance of the lease," the words "whilst he is in possession of the property leased but not afterwards," shall be substituted; and

(b) in clause (o), after the words "or fell" the words "or sell" shall be inserted, and after the words "or damage buildings," the words "belonging to the lessor or" shall be inserted.

51. In clause (g) of section 111 of the said Act.—

Amendment
of section 111.

(a) the words "or the lease shall become void" shall be omitted;

(b) after the words "title in himself" the following shall be inserted, namely :—

"or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event";

(c) for the words "either case" the words "any of these cases" shall be substituted; and

(d) for the words "does some act showing" the words "give notice in writing to the lessee of" shall be substituted.

52. After section 114 of the said Act, the following section shall be inserted, namely :—

Insertion of
new section
114 A.

"114-A. Where a lease of immovable property has been determined by forfeiture for a breach of an express condition which provides that on breach thereof the lessor may re-enter, no suit for ejectment shall lie unless and until the lessor has served on the lessee a notice in writing—

Relief against
forfeiture in
certain other
cases.

(a) specifying the particular breach complained of
and

(b) if the breach is capable of remedy, requiring the lessee to remedy the breach; and the lessee fails within a reasonable time from the date of the service of the notice, to remedy the breach, if it is capable of remedy.

Nothing in this section shall apply to an express condition against the assigning, under-letting, parting with the possession, or disposing of the property leased, or to an express condition relating to forfeiture in case of non-payment of rent."

Substitution
of new section
for section 119.

53. For section 119 of the said Act, the following section shall be substituted, namely :—

Right of party
deprived of
thing received
in exchange.

"119. If any party to an exchange or any person claiming through or under such party is by reason of any defect in the title of the other party deprived of the thing or any part of the thing received by him in exchange, then, unless a contrary intention appears from the terms of the exchange, such other party is liable to him or any person claiming through or under him for loss caused thereby, or at the option of the person so deprived, for the return of the thing transferred, if still in the possession of such other party or his legal representative or a transferee from him without consideration."

Amendment
of section 128.

54. In section 128 of the said Act, after the words "debts due by" the words "and liabilities of" shall be inserted.

Amendment
of section 130.

55. In section 130 of the said Act :—

after the words "The transfer of an actionable claim" the words "whether with or without consideration" shall be inserted.

Saving clause.

56. Nothing in any of the following provisions of this Act namely sections 2, 6, 7, 12, 15, 16, 24, 27, clause (c) of section 28, sections 29, 30, 41, 47, 49, 51, 52, 53 and 55 shall be deemed in any way to affect—

(a) the terms of incidents of any transfer of property made or effected before the first day of *January 1939*

(b) the validity, invalidity, effect or consequences of anything already done or suffered before the aforesaid date,

(c) any right, title, obligation or liability already acquired, accrued or incurred before such date, or

(d) any remedy or proceeding in respect of such right, title, obligation or liability and nothing in any

other provision of this Act shall render invalid or in any way affect anything already done before the first day of ~~January~~ ^{February} in any proceeding pending in a Court on that date; and any such remedy and any such proceeding as is herein referred to may be enforced, instituted or continued, as the case may be, as if this Act had not been passed.

322/1937
356
As finally passed

NOTIFICATION.

No. 2825—L. O., Bangalore dated 9th December 1937.

Under Rule 8 of the rules for the conduct of business of the Mysore Legislative Council, the accompanying Bill to supplement the Transfer of Property (Amendment) Regulation is published for general information with the statement of objects and reasons.

By Order,
A. SUNDARARAJA RAO,
Secretary,
Mysore Legislative Council.

THE TRANSFER OF PROPERTY (AMENDMENT) SUPPLEMENTARY BILL.

A Bill to supplement the Transfer of Property (Amendment) Regulation. ~~Act~~

Whereas by reason of the passing of the Transfer of Property (Amendment) Regulation it is expedient that certain amendments should be made in certain other enactments; it is hereby enacted as follows:—

1. (1) This Regulation may be called *the Transfer of Property (Amendment) Supplementary Regulation, 1938*. Short title and commencement.
- (2) It shall come into force on the 1st day of *January 1939*.

2. After section 27 of the specific Relief Act, 1877, as in force in Mysore, the following section shall be inserted, namely:—

Insertion of new Section 27-A. in Specific Relief Act.

“27-A. Subject to the provisions of this Chapter, where a contract to lease immovable property is made in writing signed by the parties thereto or on their behalf, either party may, notwithstanding that the contract, though required to be registered, has not been registered, sue the other for specific performance of the contract if,—

Specific performance in case of part performance of contract to lease.

(a) where specific performance is claimed by the lessor, he has delivered possession of the property to the lessee in part performance of the contract; and

(b) where specific performance is claimed by the lessee, he has in part performance of the contract, taken possession of the property, or being already in possession,

continues in possession in part performance of the contract, and has done some act in furtherance of the contract;

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.

This section applies to contracts to lease executed after the first day of

Amendment
of Registra-
tion Regula-
tion.

34 (1) In section 17 of the Mysore Registration Regulation, 1903,—

(a) after clause (d) the following clause shall be added, namely:—

“(dd) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards to or in immovable property”; and

(b) in clause (j) for the words “and awards” the words “except decrees or orders expressed to be made on a compromise and comprising immovable property other than that which is the subject matter of the suit or proceeding” shall be substituted.

(2) In section 48 of the same Regulation, after the words “or followed by delivery of possession” the following words shall be added, namely:—

“and the same constitutes a valid transfer under any law for the time being in force:

Provided that a mortgage by deposit of title deeds as defined in section 58 of the Transfer of Property Regulation shall take effect against any mortgage-deed subsequently executed and registered which relates to the same property.”

(3) In section 49 of the same Regulation—

(a) after the word and figures “section 17” the words “or by any provision of the Transfer of Property Regulation” shall be inserted; and

(b) to that section the following proviso shall be added, namely:—

“Provided that an unregistered document affecting immovable property and required by this Regulation or the Transfer of Property Regulation to be registered may

be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877, as in force in Mysore, or as evidence of part performance of a contract for the purposes of section 53-A of the Transfer of Property Regulation or as evidence of any collateral transaction not required to be effected by registered instrument."

4. (1) In section 102 of the Indian Succession Act, 1865, as in force in Mysore.

Amendment
of Indian
Succession
Act.

(a) for the words "wholly void" the words "void in regard to those persons only and not in regard to the whole class" shall be substituted;

b) in *Illustration (a)* for the words "and, as it is given to all his children as a class, it is not good as to any division of that class, but is wholly void" the following words shall be substituted, namely:—

"and in regard to those who do not attain the age of 25 within 18 years after A's death, but is operative in regard to the other children of A"; and

(c) in *Illustration (b)*, for the words "The mention of B, C and D by name does not prevent the bequest from being regarded as a bequest to a class, and the bequest is wholly void" the following words shall be substituted, namely:—

"Although the mention of B, C and D does not prevent the bequest from being regarded as a bequest to a class, it is not wholly void. It is operative as regards any of the children B, C or D, who attains the age of 25 within 18 years after A's death."

(2) for section 103 of the same Act, the following section shall be substituted, namely:—

"103. Where by reason of any of the rules contained in sections 100 and 101 any bequest in favour of a person or of a class of persons is void in regard to such person or the whole of such class, any bequest contained in the same will and intended to take effect after or upon failure of such prior bequest is also void."

Bequest to
take effect on
failure of prior
bequest.

(3) For section 104 of the same Act and the *Illustration* thereto, the following section shall be substituted, namely:—

"104. (1) Where the terms of a will direct that the income arising from any property shall be accumulated either wholly or in part during any period longer than a period of eighteen years from the death of the testator,

Effect of
direction for
accumulation.

such direction shall, save as hereinafter provided, be void to the extent to which the period during which the accumulation is directed exceeds the aforesaid period, and at the end of such period, of eighteen years the property and the income thereof shall be disposed of as if the period during which the accumulation has been directed to be made had elapsed.

(2) This section shall not affect any direction for accumulation for the purpose of—

- (i) the payment of the debts of the testator or any other person taking any interest under the will, or
- (ii) the provision of portions for children or remoter issue of the testator or of any other person taking any interest under the will, or
- (iii) the preservation or maintenance of any property bequeathed;

and such direction may be made accordingly. ”

Savings.

5. Nothing in this Regulation shall be deemed to affect—

(a) the terms or incidents of any transfer or disposition of property made or effected before the first day of January 1939

(b) the validity, invalidity, effect or consequences of anything already done or suffered before the aforesaid date;

(c) any right, title, obligation or liability already acquired, accrued or incurred before such date;

(d) any remedy or proceeding in respect of such right, title, obligation or liability; or

(e) anything done in the course of any proceeding pending in any Court on the aforesaid date;

and any such remedy or proceeding may be enforced, instituted or continued, as the case may be, as if this Regulation had not been passed.

Statement of Objects and Reasons.

Consequent on the amendments proposed to the Transfer of Property Regulation, it has become necessary to introduce amendments to (1) Specific Relief Act, (2) Registration Regulation, (3) Succession Act, (4) Limitation Regulation and (5) Code of Civil Procedure.

PROCEEDINGS OF THE GOVERNMENT OF HIS HIGHNESS
THE MAHARAJA OF MYSORE.

~~Read XXX~~

ORDER NO. P 454 Lys'g-38-1. / Kumar

Dated, Bangalore, the 20th July 1938.

Ordered that the accompanying Acts to amend the Transfer of Property Act and to supplement that Act which received the assent of His Highness the Maharaja, on the thirteenth day of July 1938, be published as Acts No.XVI and No.XVII of 1938, in the Mysore Gazette for general information.

K. S. Narayana
For General Secretary to Government.
sq

To

The Compiler, Mysore Gazette, for publication in Part IV of the Gazette, in English and Kannada and for supply of spare copies in English, and Kannada as per standing orders. Proofs should be sent to this office for approval before publication.

MK.9.

36

ACT No. XVI OF 1938.

*(Received the assent of His Highness the Maharaja on
the thirteenth day of July 1938.)*

**An Act to amend the Transfer of Property Act for
certain purposes.**

Price: 0-2-0.

NOTIFICATION.

*Order No. P. 454—Legis. 9-38-1, dated Bangalore,
20th July 1938.*

Ordered that the accompanying Acts to amend the Transfer of Property Act and to supplement that Act which received the assent of His Highness the Maharaja, on the thirteenth day of July 1938, be published as Acts No. XVI and No. XVII of 1938, in the *Mysore Gazette*, for general information.

M. VENKATESA IYENGAR,
*Secretary to Government,
General Department.*

ACT No. XVI OF 1938.

*(Received the assent of His Highness the Maharaja on the
thirteenth day of July 1938.)*

**An Act to amend the Transfer of Property Act for
certain purposes.**

Whereas it is expedient to amend the Transfer of Property Act, 1918, for the purposes hereinafter appearing; it is hereby enacted as follows:—

1. (1) This Act may be called the Transfer of Property (Amendment) Act, 1938. Short title
and com-
mencement.
- (2) It shall come into force on the first day of January 1939.
2. In section 3 of the Transfer of Property Act (hereinafter referred to as the said Act), for the last Amendment
of section 3.

paragraph containing the definition of "notice," the following shall be substituted, namely:—

"a person is said to have notice" of a fact when he actually knows that fact, or when, but for wilful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it.

Explanation I.—Where any transaction relating to immovable property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part of or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration or, if the instrument has been registered under sub-section (2) of section 30 of the Mysore Registration Act, 1903, from the earliest date on which a memorandum thereof has been filed by any Sub-Registrar under section 66 of that Act:

Provided that—

(1) the instrument has been registered and its registration completed in the manner prescribed by the Mysore Registration Act, 1903, and the rules made thereunder,

(2) the instrument has been duly entered or filed, as the case may be, in the books kept under section 51 of that Act, and

(3) the particulars regarding the transaction to which the instrument relates have been correctly entered in the indexes kept under section 55 of that Act.

Explanation II.—Any person acquiring any immovable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof.

Explanation III.—A person shall be deemed to have had notice of any fact if his agent acquires notice thereof whilst acting on his behalf in the course of business to which that fact is material:

Provided that, if the agent fraudulently conceals the fact, the principal shall not be charged with notice thereof as against any person who was a party to or otherwise cognizant of the fraud."

Amendment
of section 5.

3. In section 5 of the said Act, after the words "or to himself" the words "or to himself" shall be inserted; and to the same section the following paragraph shall be added, namely:

"In this section 'living person' includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals."

4. In section 6 of the said Act, after clause (d) the following clause shall be inserted, namely :— Amendment of section 6.

"(dd) A right to future maintenance, in whatsoever manner arising, secured or determined, cannot be transferred."

5. For the second paragraph of section 11 of the said Act, beginning with the words "Nothing in this section" and ending with the words "in a particular manner" the following shall be substituted, namely :— Amendment of section 11.

"Where any such direction has been made in respect of one piece of immovable property for the purpose of securing the beneficial enjoyment of another piece of such property, nothing in this section shall be deemed to affect any right which the transferor may have to enforce such direction or any remedy which he may have in respect of a breach thereof."

6. In section 15 of the said Act, for the words "as regards the whole class," the following words shall be substituted, namely :— Amendment of section 15.

"in regard to those persons only and not in regard to the whole class."

7. For sections 16, 17 and 18 of the said Act, the following sections shall be substituted, namely :— Substitution of new sections for sections 16, 17 and 18.

"16. Where by reason of any of the rules contained in sections 13 and 14, an interest created for the benefit of a person or of a class of persons fails in regard to such person or the whole of such class, any interest created in the same transaction and intended to take effect after or upon failure of such prior interest also fails. Transfer to take effect on failure of prior interest.

'17. (1) Where the terms of a transfer of property direct that the income arising from the property shall be accumulated either wholly or in part during a period longer than— Direction for accumulation.

(a) the life of the transferor, or

(b) a period of eighteen years from the date of the transfer,

such direction shall, save as hereinafter provided, be void to the extent to which the period during which the accumulation is directed exceeds the longer of the aforesaid periods, and at the end of such last-mentioned period the property and the income thereof shall be disposed of as if the period during which the accumulation has been directed to be made had elapsed.

(2) This section shall not affect any direction for accumulation for the purpose of—

- (i) the payment of the debts of the transferor or any other person taking any interest under the transfer, or
- (ii) the provision of portions for children or remoter issue of the transferor or of any other person taking any interest under the transfer, or
- (iii) the preservation or maintenance of the property transferred;

and such direction may be made accordingly.

Transfer in
perpetuity for
benefit of
public.

“18. The restrictions in sections 14, 16 and 17 shall not apply in the case of a transfer of property for the benefit of the public in the advancement of religion, knowledge, commerce, health, safety, or any other object beneficial to mankind.”

Amendment
of section 39.

8. In section 39 of the said Act—

- (a) the words “with the intention of defeating such right” shall be omitted, and for the words “of such intention” the word “thereof” shall be substituted; and
- (b) the *illustration* shall be omitted.

Amendment
of section 40.

9. In section 40 of the said Act for the words “of the latter property or to compel its enjoyment in a particular manner,” the words “in a particular manner of the latter property” shall be substituted.

Amendment
of section 43.

10. In section 43 of the said Act, after the word “person” the words “fraudulently or” shall be inserted.

Amendment
of section 52.

11. (1) In section 52 of the said Act—

- (a) for the words “active prosecution” the word “pendency” shall be substituted;
- (b) for the words “a contentious” the word “any” shall be substituted; and
- (c) after the words “suit or proceeding,” where they occur for the first time, the words “which is not collusive and” shall be inserted.

(2) To the same section the following *Explanation* shall be added, namely:—

“*Explanation.*—For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.”

12. For section 53 of the said Act, the following section shall be substituted, namely:—

“53. (1) Every transfer of immovable property made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed.

Nothing in this sub-section shall impair the rights of a transferee in good faith and for consideration.

Nothing in this sub-section shall affect any law for the time being in force relating to insolvency.

A suit instituted by a creditor (which term includes a decree-holder whether he has or has not applied for execution of his decree) to avoid a transfer on the ground that it has been made with intent to defeat or delay the creditors of the transferor, shall be instituted on behalf of, or for the benefit of, all the creditors.

(2) Every transfer of immovable property made without consideration with intent to defraud a subsequent transferee shall be voidable at the option of such transferee.

For the purposes of this sub-section, no transfer made without consideration shall be deemed to have been made with intent to defraud by reason only that a subsequent transfer for consideration was made.”

13. After section 53 of the said Act, the following section shall be inserted, namely:—

“53-A. Where any person contracts to transfer for consideration any immovable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty,

Substitution
of new section
for section 53.
Fraudulent
transfer.

Insertion of
new section
53-A.

Part
performance.

and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract,

and the transferee has performed or is willing to perform his part of the contract,

then, notwithstanding that the contract, though required to be registered, has not been registered, or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof."

Amendment
of section 55.

14. In section 55 of the said Act—

(a) in sub-clause (a) of clause (1), after the word "property" the words "or in the seller's title thereto" shall be inserted;

(b) in sub-clause (b) of clause (4), after the word "buyer," where it occurs for the second time, the words "any transferee without consideration or any transferee with notice of the non-payment," shall be inserted; and after the words "on such amount or part" the words "from the date on which possession has been delivered" shall be added; and

(c) in sub-clause (b) of clause (6), the words "with notice of the payment" shall be omitted.

Substitution
of new section
for section 56.

Marshalling
by subsequent
purchaser.

15. For section 56 of the said Act, the following shall be substituted, namely:—

"56. If the owner of two or more properties mortgages them to one person and then sells one or more of the properties to another person, the buyer is, in the absence of a contract to the contrary, entitled to have the mortgage-debt satisfied out of the property or properties not sold to him, so far as the same will extend, but not so as to prejudice the rights of the mortgagee or persons

claiming under him or of any other person who has for consideration acquired an interest in any of the properties."

16. In section 58 of the said Act, (a) to clause (c) the following proviso shall be added, namely:— Amendment
of section 58.

"Provided that no such transaction shall be deemed to be a mortgage, unless the condition is embodied in the document which effects or purports to effect the sale;"

(b) in clause (d)—

- (i) after the words "Where the mortgagor delivers possession" the words "or expressly or by implication binds himself to deliver possession" shall be inserted;
- (ii) for the words "and to appropriate them" the words "or any part of such rents and profits and to appropriate the same" shall be substituted; and
- (iii) after the words "or partly in lieu of interest," for the word "and" the word "or" shall be substituted; and

(c) after clause (e) the following clauses shall be added, namely:—

- "(f) The transaction is called a mortgage by deposit of title-deeds where a person, in any area to which this provision may be extended by the Government by notification in the official Gazette, delivers to a Bank or its authorized agent documents of title relating to immovable property with intent to create a security thereon and accompanied by a memorandum in writing signed by the debtor specifying such property and the amount of credit given or agreed to be given by the Bank on the security of such property, provided that a copy of such memorandum under the seal of the Bank and the signature of its authorized agent is delivered or transmitted by registered post within ten days of the delivery to the Bank as aforesaid of the memorandum, to every registering officer within whose district or sub-district the whole or any portion of such property is situated, or where a special registering officer is appointed or designated by Government in this behalf, to such registering officer, and such registering

Mortgage by
deposit of
title-deeds.

officer shall thereupon file the copy in his Book No. 1.

“*Explanation.*—‘Bank’ in this clause means an association or company formed principally for the purpose of engaging on the business of banking and registered under the provisions of the law relating to Companies for the time being in force in Mysore, or in the United Kingdom or in any of the Colonies or Dependencies thereof, or in British India or in any other Indian States which may be notified by the Government in the official Gazette in this behalf or incorporated by an Act of Parliament or of the Central Legislature or of a Provincial Legislature in India or by Royal Charter or Letters Patent.”

Anomalous mortgage.

“(g) A mortgage which is not a simple mortgage, a mortgage by conditional sale, an usufructuary mortgage, an English mortgage or a mortgage by deposit of title-deeds within the meaning of this section is called an anomalous mortgage.”

Amendment of section 59.

17. In section 59 of the said Act—

(a) after the words “a mortgage” the words “other than a mortgage by deposit of title-deeds” shall be inserted and

(b) the second paragraph and the *Explanation* shall be omitted.

Insertion of, new section 59-A.

18. After section 59 of the said Act, the following section shall be inserted, namely:—

References to mortgagors and mortgagees to include persons deriving title from them.

“59-A. Unless otherwise expressly provided, reference in this Chapter to mortgagors and mortgagees shall be deemed to include references to persons deriving title from them respectively.”

Amendment of section 60.

19. In section 60 of the said Act,

(a) for the word “payable” the word “due” shall be substituted;

(b) for the words “the mortgage-deed, if any, to the mortgagor” the following words shall be substituted, namely:—

“to the mortgagor the mortgage-deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee;”

(c) for the word “order” the word “decree” shall be substituted; and

(d) after the words "remaining due on the mortgage, except" the word "only" shall be inserted.

20. After section 60 of the said Act, the following sections shall be inserted, namely :—

Insertion of new sections 60-A and 60-B.

"60-A. (1) Where a mortgagor is entitled to redemption, then, on the fulfilment of any conditions on the fulfilment of which he would be entitled to require a re-transfer, he may require the mortgagee, instead of re-transferring the property, to assign the mortgage-debt and transfer the mortgaged property to such third person as the mortgagor may direct; and the mortgagee shall be bound to assign and transfer accordingly.

Obligation to transfer to third party instead of re-transference to mortgagor.

(2) The rights conferred by this section belong to and may be enforced by the mortgagor or by any encumbrancer notwithstanding an intermediate encumbrance; but the requisition of any encumbrancer shall prevail over a requisition of the mortgagor and, as between encumbrancers, the requisition of a prior encumbrancer shall prevail over that of a subsequent encumbrancer.

(3) The provisions of this section do not apply in the case of a mortgagee who is or has been in possession.

60-B. A mortgagor, as long as his right of redemption subsists, shall be entitled at all reasonable times, at his request and at his own cost, and on payment of the mortgagee's costs and expenses in this behalf, to inspect and make copies or abstracts of, or extracts from, documents of title relating to the mortgaged property which are in the custody or power of the mortgagee."

Right to inspection and production of documents.

21. For section 61 of the said Act the following section shall be substituted, namely :—

Substitution of new section for section 61.

"61. A mortgagor who has executed two or more mortgages in favour of the same mortgagee shall, in the absence of a contract to the contrary when the principal money of any two or more of the mortgages has become due, be entitled to redeem any one such mortgage separately, or any two or more of such mortgages together."

Right to redeem separately or simultaneously.

22. In section 62 of the said Act—

(a) after the word "property," where it first occurs, the words "together with the mortgage deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee" shall be inserted;

Amendment of section 62.

(b) for the words "the interest of the principal money" the words "or any part thereof a part only of the mortgage money," shall be substituted; and

(c) for the words "the principal money" where they occur for the second time, the words "the mortgage-money or the balance thereof" shall be substituted.

Amendment
of section 63.

23. In section 63 of the said Act for the words "at the same rate of interest" the words "with interest at the same rate as is payable on the principal, or, where no such rate is fixed at the rate of nine per cent per annum" shall be substituted.

Insertion of
new section
63-A.

24. After section 63 of the said Act, the following section shall be inserted, namely:—

Improve-
ments to
mortgaged
property.

"63-A. (1) Where mortgaged property in possession of the mortgagee has, during the continuance of the mortgage, been improved, the mortgagor, upon redemption, shall, in the absence of a contract to the contrary, be entitled to the improvement; and the mortgagor shall not, save only in cases provided for in sub-section (2), be liable to pay the cost thereof.

(2) Where any such improvement was effected at the cost of the mortgagee and was necessary to preserve the property from destruction or deterioration or was necessary to prevent the security from becoming insufficient, or was made in compliance with the lawful order of any public servant or public authority, the mortgagor shall, in the absence of a contract to the contrary, be liable to pay the proper cost thereof as an addition to the principal money with interest at the same rate as is payable on the principal, or where no such rate is fixed, at the rate of nine per cent per annum, and the profits, if any, accruing by reason of the improvement shall be credited to the mortgagor.

(3) Notwithstanding anything in sub-section (1) a mortgagee may remove at any time whilst he is in possession of the property mortgaged, but not afterwards, all things which he has attached to the earth, provided he leaves the property in the state in which he received it."

Amendment
of section 64.

25. In section 64 of the said Act, the words "for a term of years" shall be omitted.

Amendment
of section 65.

26. In section 65 of the said Act.—

(a) in clause (d), the words "for a term of years" shall be omitted; and

(b) the words "Nothing in clause (c), or in clause (d), so far as it relates to the payment of future rent, applies in the case of an usufructuary mortgage" shall be omitted.

27. After section 65 of the said Act, the following section shall be inserted, namely :—

Insertion of
new section
65-A.

"65-A. (1) Subject to the provisions of sub-section (2), a mortgagor, while lawfully in possession of the mortgaged property, shall have power to make leases thereof which shall be binding on the mortgagee.

Mortgagor's
power to
lease.

(2) (a) Every such lease shall be such as would be made in the ordinary course of management of the property concerned, and in accordance with any local law, custom or usage.

(b) Every such lease shall reserve the best rent that can reasonably be obtained, and no premium shall be paid or promised and no rent shall be payable in advance.

(c) No such lease shall contain a covenant for renewal.

(d) Every such lease shall take effect from a date not later than six months from the date on which it is made.

(e) In the case of a lease of buildings, whether leased with or without the land on which they stand, the duration of the lease shall in no case exceed three years and the lease shall contain a covenant for payment of the rent and a condition of re-entry on the rent not being paid within a time therein specified.

(3) The provisions of sub-section (1) apply only if and as far as a contrary intention is not expressed in the mortgage-deed; and the provisions of sub-section (2) may be varied or extended by the mortgage-deed, and as so varied and extended, shall, as far as may be, operate in like manner and with all like incidents, effects and consequences, as if such variations or extensions were contained in that sub-section."

28. In section 67 of the said Act—

Amendment
of section 67.

(a) for the word "payable" the word "due" shall be substituted;

(b) for the words "an order," wherever they occur, the words "a decree" shall be substituted; and

(c) In clause (a) for the words "a simple mortgage as such" the following words shall be substituted, *viz.*, "any mortgagee, other than a mortgagee by conditional

sale or a mortgagee under an anomalous mortgage by the terms of which he is entitled to foreclose."

Insertion of
new section
67-A.

29. After section 67 of the said Act, the following section shall be inserted, namely:—

Mortgagee
when bound
to bring one
suit on several
mortgages.

"67-A. A mortgagee who holds two or more mortgages executed by the same mortgagor in respect of each of which he has a right to obtain the same kind of decree under section 67, and who sues to obtain such decree on any one of the mortgages, shall, in the absence of a contract to the contrary, be bound to sue on all the mortgages in respect of which the mortgage money has become due."

Substitution
of new section
for section 68.

30. For section 68 of the said Act, the following section shall be substituted, namely:—

Right to sue
for mortgage
money.

"68. (1) The mortgagee has a right to sue for the mortgage money in the following cases and no others, namely:—

- (a) where the mortgagor binds himself to repay the same;
- (b) where, by any cause other than the wrongful act or default of the mortgagor or mortgagee, the mortgaged property is wholly or partially destroyed or the security is rendered insufficient within the meaning of section 66, and the mortgagee has given the mortgagor a reasonable opportunity of providing further security enough to render the whole security sufficient, and the mortgagor has failed to do so;
- (c) where the mortgagee is deprived of the whole or part of his security by or in consequence of the wrongful act or default of the mortgagor;
- (d) where the mortgagee being entitled to possession of the mortgaged property, the mortgagor fails to deliver the same to him, or to secure the possession thereof to him without disturbance by the mortgagor or any person claiming under a title superior to that of the mortgagor:

Provided that, in the case referred to in clause (a), a transferee from the mortgagor or from his legal representative shall not be liable to be sued for the mortgage money.

(2) Where a suit is brought under clause (a) or clause (b) of sub-section (1), the Court may, at its discre-

tion, stay the suit and all proceedings therein, notwithstanding any contract to the contrary, until the mortgagee has exhausted all his available remedies against the mortgaged property or what remains of it, unless the mortgagee abandons his security and, if necessary, re-transfers the mortgaged property."

31. In section 71 of the said Act, the words "for a term of years" shall be omitted. Amendment
of section 71.

32. In section 72 of the said Act:—

Amendment
of section 72.

- (a) for the words "When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property, he" the words "A mortgagee" shall be substituted.
- (b) clause (a) shall be omitted;
- (c) in clause (b), for the words "its preservation" the words "the preservation of the mortgaged property" shall be substituted;
- (d) after the words "nine per cent per annum," the following Proviso shall be inserted, namely:—

"Provided that the expenditure of money by the mortgagee under clause (b) or clause (c) shall not be deemed to be necessary unless the mortgagor has been called upon and has failed to take proper and timely steps to preserve the property or to support the title." and

- (e) for the words, "a charge on the mortgaged property, in addition to the principal money, with the same priority and with interest at the same rate" the following shall be substituted, namely:—

"added to the principal money with interest at the same rate as is payable on the principal money, or where no such rate is fixed, at the rate of nine per cent per annum."

33. For section 73 of the said Act, the following section shall be substituted, namely:—

Substitution
of new section
for section 73.

"73. (1) Where the mortgaged property or any part thereof or any interest therein is sold owing to failure to pay arrears of revenue or other charges of a public nature or rent due in respect of such property, and such failure did not arise from any default of the mortgagee, the mortgagee shall be entitled to claim payment of the mortgage-money, in whole or in part, out of any surplus

Right to
proceeds of
revenue sale
or compensa-
tion on
acquisition.

of the sale proceeds remaining after payment of the arrears and of all charges and deductions directed by law.

(2) Where the mortgaged property or any part thereof or any interest therein is acquired under the Land Acquisition Act, 1894, or any other enactment for the time being in force, providing for the compulsory acquisition of immovable property, the mortgagee shall be entitled to claim payment of the mortgage-money, in whole or in part, out of the amount due to the mortgagor as compensation.

(3) Such claims shall prevail against all other claims except those of prior encumbrances, and may be enforced notwithstanding that the principal money on the mortgage has not become due."

Omission of
sections 74
and 75.
Amendment
of section 76.

34. Section 74 and section 75 of the Act shall be omitted.

35. In section 76 of the said Act :—

(a) in clause (c), after the words "charges of a public nature" the words "and all rent" shall be inserted;

(b) in clause (h), after the words "deducting the expenses" the words "properly incurred for the management of the property and the collection of rents and profits and the other expenses" shall be inserted, and the words "on the principal-money" shall be omitted; and

(c) in clause (i), the word "gross" shall be omitted;

Omission of
section 80.

36. Section 80 of the said Act shall be omitted.

Substitution
of new section
for section 81.
Marshalling
securities.

37. For sub-section (1) of section 81 of the said Act, the following section shall be substituted, namely :—

"81. (1) If the owner of two or more properties mortgages them to one person and then mortgages one or more of the properties to another person, the subsequent mortgagee is, in the absence of contract to the contrary, entitled to have the prior mortgage-debt satisfied out of the property or properties not mortgaged to him, so far as the same will extend, but not so as to prejudice the rights of the prior mortgagee or of any other person who has for consideration acquired an interest in any of the properties."

Amendment
of section 82.

38. In section 82 of the said Act :—

(a) for the first paragraph beginning with the words

“Where several properties,” and ending with the words “date of the mortgage” the following shall be substituted, namely :—

“Where property subject to a mortgage belongs to two or more persons having distinct and separate rights of ownership therein, the different shares in or parts of such property owned by such persons are, in the absence of a contract to the contrary, liable to contribute ratably to the debt secured by the mortgage, and, for the purpose of determining the rate at which each such share or part shall contribute, the value thereof shall be deemed to be its value at the date of the mortgage after deduction of the amount of any other mortgage or charge to which it may have been subject on that date” and

(b) in the third paragraph, for the word “second” the word “subsequent” shall be substituted.

39. In section 83 of the said Act :—

Amen.
of sect

- (a) for the words “has become payable” the words “payable in respect of any mortgage has become due” shall be substituted ;
- (b) for the words “if then in his possession or power” the words “and all documents in his possession or power relating to the mortgaged property” shall be substituted ;
- (c) after the word “mortgage-deed,” where it occurs for the second time, the words “and all such other documents” shall be inserted ; and
- (d) the following paragraph shall be added after the words “such other person as aforesaid,” namely :—

“Where the mortgagee is in possession of the mortgaged property, the Court shall, before paying to him the amount so deposited, direct him to deliver possession thereof to the mortgagor and at the cost of the mortgagor either to retransfer the mortgaged property to the mortgagor or to such third person as the mortgagor may direct or to execute and (where the mortgage has been effected by a registered instrument) have registered an acknowledgment in writing that any right in derogation of the mortgagor’s interest transferred to the mortgagee has been extinguished.”

Amendment
of section 84.

40. In section 84 of the said Act :—

- (a) after the words “from the date of the tender or” the words “in the case of a deposit, where no previous tender of such amount has been made,” shall be inserted;
- (b) for the words “as the case may be” the following shall be substituted, namely :—

“and the notice required by section 83 has been served on the mortgagee :

“Provided that, where the mortgagor has deposited such amount without having made a previous tender thereof and has subsequently withdrawn the same or any part thereof, interest on the principal money shall be payable from the date of such withdrawal ;” and

- (c) after the words “tender of the mortgage-money” the words “and such notice has not been given before the making of the tender or deposit, as the case may be” shall be added.

Substitution
of new section
for section 91.

41. For section 91 of the said Act the following section shall be substituted, namely :—

Persons who
may sue for
redemption.

“91. Besides the mortgagor, any of the following persons may redeem, or institute a suit for redemption of, the mortgaged property, namely :—

- (a) any person (other than the mortgagee of the interest sought to be redeemed) who has any interest in, or charge upon, the property mortgaged or in or upon the right to redeem the same ;
- (b) any surety for the payment of the mortgage-debt or any part thereof ; or
- (c) any creditor of the mortgagor who has in a suit for the administration of his estate obtained a decree for sale of the mortgaged property.”

Insertion of
new sections
92, 93 and 94.
Subrogation.

42. After section 91 of the said Act, the following sections shall be inserted namely :—

“92. Any of the persons referred to in section 91 (other than the mortgagor) and any co-mortgagor shall, on redeeming property subject to the mortgage, have, so far as regards redemption, foreclosure or sale of such property, the same rights as the mortgagee whose mortgage he redeems may have against the mortgagor or any other mortgagee.

The right conferred by this section is called the right of subrogation, and a person acquiring the same is said to be subrogated to the rights of the mortgagee whose mortgage he redeems.

A person who has advanced to a mortgagor money with which the mortgage has been redeemed shall be subrogated to the rights of the mortgagee whose mortgage has been redeemed, if the mortgagor has by a registered instrument agreed that such persons shall be subrogated.

Nothing in this section shall be deemed to confer a right of subrogation on any person unless the mortgage in respect of which the right is claimed has been redeemed in full.

93. No mortgagee paying off a prior mortgage, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his original security; and except in the case provided for by section 79, no mortgagee making a subsequent advance to the mortgagor, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his security for such subsequent advance. Prohibition of tacking.

94. Where a property is mortgaged for successive debts to successive mortgagees, a mesne mortgagee has the same rights against mortgagees posterior to himself as he has against the mortgagor." Rights of mesne mortgagee.

43. For section 95 of the said Act the following sections shall be substituted, namely:— Substitution of new sections for section 95.

"95. Where one of several mortgagors redeems the mortgaged property, he shall, in enforcing his right of subrogation under section 92 against his co-mortgagors, be entitled to add to the mortgage-money recoverable from them such proportion of the expenses properly incurred in such redemption as is attributable to their share in the property. Right of redeeming co-mortgagor to expenses.

96. The provisions hereinbefore contained which apply to a simple mortgage shall, so far as may be, apply to a mortgage by deposit of title-deeds." Mortgage by deposit of title-deeds.

44. In section 98 of the said Act, for the words "a mortgage not being a simple mortgage, a mortgage by conditional sale, an usufructuary mortgage or an English mortgage or a combination of the first and third, or the second and third, of such forms," the words "an anomalous mortgage" shall be substituted. Amendment of section 98.

Amendment
of section 100

45. In section 100 of the said Act,

(a) for the words "as to a mortgagor shall, so far as may be, apply to the owner of such property, and the provisions of sections 81 and 82 shall, so far as may be, apply to the person having such charge" the words "which apply to a simple mortgage shall, so far as may be, apply to such charge," shall be substituted; and

(b) after the words "in the execution of his trust" the following words shall be added, namely:—

"and save as otherwise expressly provided by any law for the time being in force, no charge shall be enforced against any property in the hands of a person to whom such property has been transferred for consideration and without notice of the charge."

Substitution
of new section
for section
101.

No merger in
case of subse-
quent encum-
brance.

46. For section 101 of the said Act, the following section shall be substituted, namely:—

"101. Any mortgagee of, or person having a charge upon immovable property, or any transferee from such mortgagee or charge-holder, may purchase or otherwise acquire the rights in the property of the mortgagor or owner, as the case may be, without thereby causing the mortgage or charge to be merged as between himself and any subsequent mortgagee of, or person having a subsequent charge upon, the same property; and no such subsequent mortgagee or charge-holder shall be entitled to foreclose or sell such property without redeeming the prior mortgage or charge, or otherwise than subject thereto."

Amendment
of section 102.

47. In section 102 of the said Act,

(a) for the words "Where the person or agent on whom such notice should be served cannot be found in the said district, or is unknown" the words "Where no person or agent on whom such notice should be served can be found or is known," shall be substituted;

(b) after the words "and any notice served in compliance with such direction shall be deemed sufficient" the following proviso shall be inserted, namely:—

"Provided that, in the case of a notice required by section 83, in the case of a deposit, the application shall be made to the Court in which the deposit has been made."

(c) for the words "Where the person or agent to whom such tender should be made cannot be found within the said district, or is unknown" the words "Where

no person or agent to whom such tender should be made can be found or is known," shall be substituted; and

(d) for the words "in such Court as last aforesaid" the words "in any Court in which a suit might be brought for redemption of the mortgaged property" shall be substituted.

48. In section 106 of the said Act, for the words "tendered or delivered either personally to the party who is intended to be bound by it," the following shall be substituted, namely:—

Amendment
of section 106.

"either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party,"

49. In section 107 of the said Act, after the words "by delivery of possession," where they first occur, the following paragraph shall be inserted, namely:—

Amendment
of section 107

"Where a lease of immovable property is made by a registered instrument, such instrument or, where there are more instruments than one, each such instrument shall be executed by both the lessor and the lessee."

50. In section 108 of the said Act.—

Amendment
of section 108.

(a) in clause (h)

(i) after the words "the lessee may" the words "even after the determination of the lease" shall be inserted; and

(ii) for the words "during the continuance of the lease," the words "whilst he is in possession of the property leased but not afterwards," shall be substituted; and

(b) in clause (o), after the words "or fell" the words "or sell" shall be inserted, and after the words "or damage buildings," the words "belonging to the lessor or" shall be inserted.

51. In clause (g) of section 111 of the said Act—

Amendment
of section 111.

(a) the words "or the lease shall become void" shall be omitted;

(b) after the words "title in himself" the following shall be inserted, namely:—

"or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event";

(c) for the words "either case" the words "any of these cases" shall be substituted; and

(d) for the words "does some act showing" the words "gives notice in writing to the lessee of" shall be substituted.

Insertion of
new section
114-A.

Relief against
forfeiture in
certain other
cases.

52. After section 114 of the said Act, the following section shall be inserted, namely :—

"114-A. Where a lease of immovable property has been determined by forfeiture for a breach of an express condition which provides that on breach thereof the lessor may re-enter, no suit for ejectment shall lie unless and until the lessor has served on the lessee a notice in writing—

(a) specifying the particular breach complained of; and

(b) if the breach is capable of remedy, requiring the lessee to remedy the breach ;
and the lessee fails within a reasonable time from the date of the service of the notice, to remedy the breach, if it is capable of remedy.

Nothing in this section shall apply to an express condition against the assigning, under-letting, parting with the possession, or disposing of the property leased, or to an express condition relating to forfeiture in case of non-payment of rent."

Substitution
of new section
for section 119.

Right of party
deprived of
thing received in
exchange.

53. For section 119 of the said Act, the following section shall be substituted, namely :—

"119. If any party to an exchange or any person claiming through or under such party is by reason of any defect in the title of the other party deprived of the thing or any part of the thing received by him in exchange, then, unless a contrary intention appears from the terms of the exchange, such other party is liable to him or any person claiming through or under him for loss caused thereby, or at the option of the person so deprived, for the return of the thing transferred, if still in the possession of such other party or his legal representative or a transferee from him without consideration."

Amendment
of section 128.

54. In section 128 of the said Act, after the words "debts due by" the words "and liabilities of" shall be inserted.

Amendment
of section 130.

55. In section 130 of the said Act :—

after the words "The transfer of an actionable claim" the words "whether with or without consideration" shall be inserted.

56. Nothing in any of the following provisions of this Act namely sections 2, 6, 7, 12, 15, 16, 24, 27, clause (c) of section 28, sections 29, 30, 41, 47, 49, 51, 52, 53 and 55 shall be deemed in any way to affect—

(a) the terms or incidents of any transfer of property made or effected before the first day of January 1939,

(b) the validity, invalidity, effect or consequences of anything already done or suffered before the aforesaid date,

(c) any right, title, obligation or liability already acquired, accrued or incurred before such date, or

(d) any remedy or proceeding in respect of such right, title, obligation or liability; and nothing in any other provision of this Act shall render invalid or in any way affect anything already done before the first day of January 1939 in any proceeding pending in a Court on that date; and any such remedy and any such proceeding as is herein referred to may be enforced, instituted or continued, as the case may be, as if this Act had not been passed.

MIRZA M. ISMAIL,
Dewan.

ACT No. XVII OF 1938.

*(Received the assent of His Highness the Maharaja
on the thirteenth day of July 1938.)*

THE TRANSFER OF PROPERTY (AMENDMENT) SUPPLEMENTARY ACT.

An Act to supplement the Transfer of Property (Amendment) Act.

Whereas by reason of the passing of the Transfer of Property (Amendment) Act, it is expedient that certain amendments should be made in certain other enactments; It is hereby enacted as follows:—

1. (1) This Act may be called the Transfer of Property (Amendment) Supplementary Act, 1938.

(2) It shall come into force on the 1st day of January 1939.

Short title and
commence-
ment.

Insertion of
new section
27-A, in Speci-
fic Relief Act.

Specific per-
formance in
case of part
performance
of contract to
lease.

2. After section 27 of the Specific Relief Act, 1877, as in force in Mysore, the following section shall be inserted, namely:—

“27-A. Subject to the provisions of this Chapter, where a contract to lease immovable property is made in writing signed by the parties thereto or on their behalf, either party may, notwithstanding that the contract, though required to be registered, has not been registered, sue the other for specific performance of the contract if,—

(a) where specific performance is claimed by the lessor, he has delivered possession of the property to the lessee in part performance of the contract; and

(b) where specific performance is claimed by the lessee, he has in part performance of the contract, taken possession of the property, or being already in possession, continues in possession in part performance of the contract, and has done some act in furtherance of the contract:

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.

This section applies to contracts to lease executed after the first day of January 1939.”

Amendment
of Registra-
tion Act.

3. (1) In section 17 of the Mysore Registration Act, 1903,—

(a) after clause (d) the following clause shall be added, namely:—

“(dd) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property”; and

(b) in clause (j) for the words “and awards” the words “except decrees or orders expressed to be made on a compromise and comprising immovable property other than that which is the subject matter of the suit or proceeding” shall be substituted.

(2) In section 48 of the same Act after the words “or followed by delivery of possession” the following words shall be added, namely:—

“and the same constitutes a valid transfer under any law for the time being in force:

Provided that a mortgage by deposit of title deeds as defined in section 58 of the Transfer of Property Act shall take effect against any mortgage-deed subsequently executed and registered which relates to the same property."

(3) In section 49 of the same Act—

(a) after the word and figures "section 17" the words "or by any provision of the Transfer of Property Act" shall be inserted; and

(b) to that section the following proviso shall be added, namely :—

"Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877, as in force in Mysore, or as evidence of part performance of a contract for the purposes of section 53-A of the Transfer of Property Act or as evidence of any collateral transaction not required to be effected by registered instrument."

4. (1) In section 102 of the Indian Succession Act, 1865, as in force in Mysore,

Amendment
of Indian
Succession
Act.

(a) for the words "wholly void" the words "void in regard to those persons only and not in regard to the whole class" shall be substituted;

(b) in *Illustration (a)* for the words "and, as it is given to all his children as a class, it is not good as to any division of that class, but is wholly void" the following words shall be substituted, namely :—

"and in regard to those who do not attain the age of 25 within 18 years after A's death, but is operative in regard to the other children of A"; and

(c) in *Illustration (b)*, for the words "The mention of B, C and D by name does not prevent the bequest from being regarded as a bequest to a class, and the bequest is wholly void" the following words shall be substituted, namely :—

"Although the mention of B, C and D does not prevent the bequest from being regarded as a bequest to a class, it is not wholly void. It is operative as regards any of the children B, C or D, who attains the age of 25 within 18 years after A's death"

(2) for section 103 of the same Act, the following section shall be substituted, namely :—

Bequest to
take effect on
failure of prior
bequest.

“ 103. Where by reason of any of the rules contained in sections 100 and 101 any bequest in favour of a person or of a class of persons is void in regard to such person or the whole of such class, any bequest contained in the same will and intended to take effect after or upon failure of such prior bequest is also void.”

(3) For section 104 of the same Act and the *Illustration* thereto, the following section shall be substituted, namely :—

Effect of
direction for
accumulation.

“ 104. (1) Where the terms of a will direct that the income arising from any property shall be accumulated either wholly or in part during any period longer than a period of eighteen years from the death of the testator, such direction shall, save as hereinafter provided, be void to the extent to which the period during which the accumulation is directed exceeds the aforesaid period, and at the end of such period of eighteen years the property and the income thereof shall be disposed of as if the period during which the accumulation has been directed to be made had elapsed.

(2) This section shall not affect any direction for accumulation for the purpose of—

- (i) the payment of the debts of the testator or any other person taking any interest under the will, or
 - (ii) the provision of portions for children or remoter issue of the testator or of any other person taking any interest under the will, or
 - (iii) the preservation or maintenance of any property bequeathed ;
- and such direction may be made accordingly.”

Savings.

5. Nothing in this Act shall be deemed to affect—

(a) the terms or incidents of any transfer or disposition of property made or effected before the first day of January 1939 ;

(b) the validity, invalidity, effect or consequences of anything already done or suffered before the aforesaid date ;

(c) any right, title, obligation or liability already acquired, accrued or incurred before such date ;

(d) any remedy or proceeding in respect of such right, title, obligation or liability ; or

(e) anything done in the course of any proceeding pending in any Court on the aforesaid date ;
and any such remedy or proceeding may be enforced, instituted or continued, as the case may be, as if this Act had not been passed.

MIRZA M. ISMAIL,
Dewan.